certain other provisions of law relating to the financing and conduct of such campaigns.

The PRESIDING OFFICER. Under the previous order, the Senator from Iowa (Mr. CLARK) is recognized to call up an amendment.

Mr. MANSFIELD. Mr. President, will the Senator yield to me for 1 minute?

Mr. CLARK. I yield.

MEDIA POLLS

Mr. MANSFIELD. Mr. President, I have been informed that at least one Senator—and perhaps others—has been contacted by a media organization as to what his position would be if an event of an extraordinary nature occurred in the Senate. That Senator raised some question about such a procedure. I want to join that Senator and to express the hope that, although under the first amendment of the Constitution the media has that right, there would be no polls taken of Senators so that we could be as open-minded as possible and as free from pressures of this kind as necessary.

Mr. HUGH SCOTT. Mr. President, will the distinguished majority leader yield?

Mr. MANSFIELD. I yield.

Mr. HUGH SCOTT. I think it was nearly a year ago that I expressed much the same sentiment at a conference of members of my party. I would join in what the distinguished majority leader has said—that it is the request of the leadership, subject to a Senator's own right to say what he thinks on any subject. I request that they would defer expressing an opinion as to what they may or may not have in mind when, as, and if we might be confronted by those situations, and I would hope that they would resist poll seeking information, in their own interest as well as in the interest of the dignity of the Senate, because this is not a ball game; as the Senator has said, it is not a circus; it is not a contest; it is not something on which ideas should be wagered. It is an extremely serious matter, and it is of a nature on which it would be well to avoid any challeenge or question in the future based on what some Senator has said. Having said that, I realize that Senators may say what they wish, but I feel obliged to say what I said a year ago.

Mr. MANSFIELD. The Senator is correct. The media can do what they wish under the first amendment, but the Senate has an obligation if and when certain extraordinary situations arise. So far, I am very proud of the way the Senate has conducted itself, and that includes each and every single Member of the Senate.

Mr. HUGH SCOTT. I am, too.

ORDER FOR ADJOURNMENT UNTIL 9:30 A.M.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 9:30 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATORS TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that immediately after the two leaders or their designees have been recognized under the standing order tomorrow, the following Senators be recognized, each for not to exceed 15 minutes and in the order stated: Senators BIDEN, ROTH, MUSKIE, HATHAWAY, CLARK, BIDEN again, STEVENS, NELSON, JAVITS, HARTKE, ERVIN, MONDALE, MATHIAS, STENNIS, and ROBERT C. BYRD.

The PRESIDING OFFICER. Without objection, it is so ordered.

FEDERAL ELECTION CAMPAIGN ACT AMENDMENTS OF 1974

The Senate continued with the consideration of the bill (S. 3044) to amend the Federal Election Campaign Act of 1971 to provide for public financing of primary and general election campaigns for Federal elective office, and to amend certain other provisions of law relating to the financing and conduct of such campaigns.

Mr. FANNIN. Mr. President, the Senate apparently is on the brink of passing a campaign financing bill designed to fool the American people into thinking that it solves the major problems in our political system. Nothing could be further from the truth.

In addition to its many other shortcomings, this bill fails completely to advance any remedy for the illegal and undesirable activities of unions in the campaign process.

Unions make their greatest impact by providing services for their chosen candidates for office. These services are provided by union staff, union supplies, and union equipment paid for out of union dues.

The great concern we have heard in the debate over campaign reform involves the amount of money donated to candidates, and the money these candidates spend on their campaign.

This money simply is used to purchase campaign services on behalf of the candidate.

If we are going to prevent people or organizations from donating money to candidates, then it follows that we also must prevent the donation of services which are the equivalent of money.

Unions simply short circuit the system by providing campaign workers who are on union payrolls, union computers, union presses, union vehicles, union phones, and other such services. These services are the same as money to the candidate.

If it is illegal for someone to donate money to candidates to purchase these services, why then is it not illegal for anyone or any organization to donate equivalent services. We are talking about services that are worth tens and hundreds of thousands of dollars—even millions in some national campaigns.

Mr. President, I am deeply concerned about what is happening here. Union leaders are seeking a "veto-proof" Congress, and they are going to great lengths to accomplish this goal.

As a Republican, I have a vested interest and you would expect me to be concerned. What worries me is that most Democrats apparently fail to see the great danger here. We face the situation where neither the Democrats nor the Republicans will be in charge of the Congress—it will be a few union leaders who will be able to call all the shots if they are successful in winning the strong control of Congress which they seek.

Our Government has functioned well over the decades and centuries because we have sought to provide a balance of all the interests in our society. Today we are in great danger of providing the unions—which represent only about 10 percent of the American people—a stranglehold on our Government. This legislation would aid them in gaining this stranglehold.

Mr. President, the union leaders have bragged that they have the most powerful political machine in the Nation, and I for one believe them. They are very powerful because Congress has not only failed to restrain them, but seems to encourage them to exercise an influence far in excess what is good for the country. An article in today's Wall Street Journal demonstrates very clearly how far the unions are going.

We have heard arguments that when a candidate accepts $1,000 or $5,000 from a contributor there is a danger that he becomes indebted to that contributor and thus loses independence and objectivity once in office.

What then, happens when a candidate gets $27,000 or about 44 percent of his funds from a union, plus union services that probably are worth double or triple the cash? How objective can he be, if elected, when it comes to considering legislation which has the stamp of approval of COPE, AFL–CIO, or the like.

Mr. President, I ask unanimous consent that the article from the Wall Street Journal be reprinted in the RECORD:

There being no objection, the article was ordered to be printed in the RECORD, as follows:

POLITICS AND LABOR—UNIONS MAKE BIG BID TO ELECT A CONGRESS THAT IS VETO-PROOF

(By James C. Hyatt)

SAGINAW, MICH.—Bob Traxler had only five minutes to make his pitch when he appeared before AFL–CIO political leaders early this year to promote his race for Congress. So he kept his message short.

"I told them I had come with a tin cup, a white cane and dark glasses," he recalls. I said. " 'Send money.' "

They have. Unions have provided over $27,000 so far. And lots of help besides.

For scores of pro-labor candidates such as Mr. Traxler, labor's goal of electing a "veto-proof Congress" this year means getting generous amounts of money, manpower, organizational talent and the other aid that can make the difference in a close race.

Mr. Traxler does have to wrestle with many worries as he strives for victory in a special House election next Tuesday. For one thing, he is seeking to become the first Democrat elected from Michigan's Eighth Congressional District since the Depression. For another, he is running in a district that gave the last Congressman, Republican James Harvey, a

59% victory in 1972. But winning labor's active help isn't something he must worry about.

The list of unions whose political arms are supporting his campaign reads like a labor Who's Who: the United Auto Workers, the Machinists, the United Transportation Union, the Amalgamated Clothing Workers, the Retail Clerks, the National Education Association, the International Brotherhood of Electrical Workers, the Firefighters, the Meatcutters and the Communication Workers.

THE MEMBERS PITCH IN

Individual union members are pitching in hard for the Democrat. Wallace "Butch" Warner, a cable splicer who is president of a Communications Workers local, has taken leave from his job in Saginaw to help coordinate labor's efforts in the Traxler campaign; a telephone hot line from the political to the union headquarters speeds appeals for campaign manpower.

Jim Chalou, a tool and die maker, is assigned full-time by the Allied Industrial Workers to drum up Traxler support; he figures he has "probably been in at least 25 or 26 plants" making his pitch. Several hundred UAW members have helped out, putting up yard signs, licking envelopes and distributing literature.

Of the $61,000 contributed to the Traxler cause through last Thursday, about 44% came from labor groups. The largest single donation, $12,000, was made by the UAW, and one high official of that union says it might cough up another $10,000 or so if necessary.

Labor's activity here, however effective in this campaign, is certainly a springtime warm-up for the heavy politicking that unions are planning for next fall. Union strategists figure that more than 70 House elections will be close enough for labor to influence the results. Already, labor's war chests are bulging, and union men are intent on electing a "veto-proof" Democratic Congress.

REAPING DIVIDENDS

The unions' intensive participation in three other special House elections this year has reaped dividends. Winning Democrats in Johnstown, Pa., Cincinnati and Grand Rapids all benefited from heavy union aid.

Labor's efforts have Republicans worried, and they are trying to turn union politicking into an issue. Thus, Vice President Gerald Ford has attacked union "outsiders" for taking over Democrats' campaigns and injecting "massive out-of-state money" into the special House campaigns. James Sparling, the GOP candidate here, charges: "The AFL–CIO and the UAW bosses want this Eighth District seat. Cost is no object; money is no object."

Without question, labor's involvement is crucial if Mr. Traxler is to win the election. And for all concerned, this is no ordinary political event.

President Nixon will appear in the Saginaw district today, a development that dismays some Republicans and delights many Democrats. Certainly the contest here will be widely interpreted as a referendum on the Nixon presidency, and the result will be seen as a harbinger of autumn election sentiment.

THE WATERGATE WEAKNESS

Labor analysts believe that Mr. Nixon's Watergate weakness gives them a real chance of electing enough Democrats to make the next Congress "veto-proof." Such a Congress, union men say, would override the President and enact bills closing many tax "loopholes" and imposing tighter controls on multinational corporations and energy-producing companies. Enactment of a liberal program of national health insurance also is a top labor goal.

While Democrats would need to elect nine more Senators and 44 more House members to gain a two-thirds edge in Congress, labor isn't setting its goal quite that high; it can usually count on some Republican support for overriding vetos. "We need to elect 23 more friends in the House and seven in the Senate," an AFL–CIO spokesman says. He adds that George Meany, the federation president says that "it is a tough job but one we think we can do." (Most politicians believe that labor's goal is achievable in the House; in the Senate, however, the consensus guess is that Democrats probably will make a net gain of only three seats or so.)

Electing a "veto-proof Congress," of course, doesn't mean supporting Democrats only. Republican Sens. Richard Schweiker and Jacob Javits have labor's backing, and so do several GOP House members. In a speech last week to a building-trades rally, AFL–CIO lobbyist Andrew Biemiller warned against "knocking off good friends of ours on the Republican side of the asile."

But Democrats are the big beneficiaries of labor's aid, and the unions have a lot to spread around. By Feb. 28, union political-action groups had $5,032,584 on hand, reports Common Cause, the self-styled people's lobbying group, which monitors campaign contributions. The sum is about equal to unions' reported political spending in the presidential year 1972.

This year's early war chest includes $1 million amassed by several maritime unions ("We're going to reward our friends and punish our enemies," vows Jesse Calhoun, president of the Marine Engineers' Beneficial Association) and $717,000 gathered by the UAW.

And the push is on for more political cash. COPE, the AFL–CIO's Committee on Political Education, the political action arm of the federation, has renewed its usual request for a $2 voluntary contribution from each union member. While the federation usually hits about 25% of that goal, "there are indications that COPE fund raising is more successful this year," one AFL–CIO official says.

The Machinists Union, which raised $246,209.47 last year, is planning a "special $2-per-member drive" to aid the objective of a "veto-proof Congress." The Brotherhood of Railway Clerks, proposing to seek $10 a member for this year's congressional races, finds contributions so far running about twice as high as usual.

Union political money has already shown up impressively in the earlier special elections this year. The Democratic winners in the first three races spent $75,000 to $90,000 each; labor contributions ranged from $18,000 to $25,000.

Most political forecasters figure that the total outlay here will top the sum spent in any of the earlier special elections and will set a high for the district as well. But money alone won't win. The key must be voter turnout, and that's where labor's activity could be crucial.

Indeed, the union-backed campaigns organization in this congressional district provides an example of how labor will operate in many campaigns next fall. The full-time and part-time manpower that unions are pumping into the Traxler campaign is giving the Democrat much higher visibility among union members than he otherwise could achieve.

To help rouse potential supporters, Mr. Traxler has laid out $9,239 for a campaign film and film-showing equipment. In the hands of his labor backers, that may turn out to be his most valuable investment.

The film, carried by campaigners to union halls and other rallies, is a 14-minute account of "Bob Traxler's Journey for Change," a piece larded with references to a childhood "Tom Sawyer existence" and shots of a pipe-smoking candidate looking thoughtfully at Michigan farmland. His 11 years in the Michigan Legislature are recalled, including his sponsorship of a law letting charitable organizations run bingo games. The working people in the audience are told of employes "losing their jobs because of wrong decisions by the administration" and by the auto companies. (Of 24,400 workers normally employed by General Motors in Saginaw and nearby Bay City, about 2,480 were laid off at last count. The local jobless rate is about 10%.)

Mr. Chalou, who is president of an Allied Industrial Workers local, finds the film effective as he campaigns for Mr. Traxler. "When the candidate can't be there," he says, "the film does the job." It was probably shown 200 times before the primary, which was held March 19.

Mr. Chalou has also distributed 22-by-28-inch lawn signs to union members—"the ones that live on main roads"—and on primary day, he called other union leaders and reminded them to turn out voters. He personally handed out 800 sample ballots in the town of Bad Axe, placing them on car windshields. Of the 309 members in his local, Mr. Chalou figures that a dozen or so have worked in the campaign up to now.

(Why is he involved? "A fellow can only take so much," he says. "I've seen enough of my fellow workers get batted around by high prices, by inflation, and by Presiden[redacted] paying $750 in taxes on a $250,000 income.")

To enlist additional union manpower, his fellow coordinator, Mr. Warner, can not only call on his own Communications Workers local but also can tap some of the 240 other union locals in this congressional district.

And he can always call Frank Garrison, a third local union man who started early and full-time on the Traxler campaign. Mr. Garrison is permanently assigned to the UAW's Saginaw Community Action Program—its political- and social-action arm. His union has perhaps the biggest single union interest in the Traxler race; the UAW has 43,000 active members in the district, plus 5,0000 to 6,000 retirees.

"Our members have been calling and asking, 'Can we help?'" Mr. Garrison says. "They've put up yard signs, licked envelopes, distributed literature door to door." Night workers have volunteered to help during the day, and others promise to "lose a day of work on election day to help." Laid off auto workers provide other help. "Richard Nixon made it possible for them to volunt[redacted] in our campaign," says Jim Goff, Mr. T[redacted] ler's campaign organizer.

Some labor groups that haven't been particularly active politically in other years are fired up for Mr. Traxler. The Michigan Education Association's Eighth District teacher members have campaigned actively for him. Some helped arrange voter-registration drives in high schools to line up 18-year-old voters. The drive registered perhaps 2,000 young voters in the district, potentially 3% or 4% of the expected Traxler turnout and certainly enough to win a close election.

Despite this congregation of labor help for Democrat Traxler, not all Republicans are alarmed. State GOP Chairman William McLaughlin says, "You take labor's involvement for granted in Michigan. I don't get ulcers over it."

Moreover, Mr. Sparling, the GOP candidate, isn't exactly campaigning by himself. Five or six staff members from the Republican National Committee have been to Saginaw to help map his election strategy. A big-name Republican, Sen. Charles Percy, has appeared on Mr. Sparling's behalf. Last weekend, Sparling campaigners put on a

"door-to-door blitz"; several hundred volunteers came from outside the district to help.

Mr. HART. Mr. President, now that the Senate has invoked cloture on the campaign reform bill, S. 3044, and turned back repeated efforts to weaken its provisions, I am hopeful we can send a strong bill to the House of Representatives and provide the country with at least one constructive effort to remedy the disastrous effect of Watergate on our body politics.

In these brief remarks, I wish not only to urge support for the committee bill, but also to respond to several disturbing themes which I have heard during the past few weeks of debate.

For several months the American people and the Congress have been told to "stop wallowing in Watergate" and to get on with "the Nation's business"—as if the problems of inflation, the energy crisis and our other dilemmas were unrelated to the preoccupations of the White House, or were unrelated to the corrosion of public confidence in their elected leaders.

Now, during debate on this bill, a companion theme has emerged: "Lets stop [illegible]llowing in campaign reform" we are [illegible], "and lets get on with the Nation's business."

Mr. President, I am confident that tactic will meet with as singular a lack of success in diverting the American people as has its predecessor. For the public understands full well that the election of a representative Government—free from both the actual danger and the appearance of undue influence—is very much their business.

It is not necessarily true that he who pays the political piper will always call the tune. Nevertheless, it is hardly reassuring to the average citizen to know that big donors at least have access to go backstage before the performance and request a few favorite melodies.

Sure, I can go to bed at night with a fair degree of confidence that my votes have not been improperly influenced by a contribution. But try to tell that to some of my constituents who disagree [illegible]ongly with my views. And particularly [illegible]r the revelations of the past 18 [illegible]nths, who can really blame them.

It is surprising, however, that after all the scandals which have emerged—and the obvious repercussions this has had on public trust of elected leaders—some still seek to portray this bill as a greedy grab by those in office, as a private raid on the Public Treasury.

Yet the President and Congress act on an annual budget in the hundreds of billions of dollars. What wiser investment could a democracy make than a few dollars per voter each year—the best estimate of what this proposal would cost—to restore confidence that public spending decisions are made with the public interest in mind, and not the private interests of those who underwrite our campaigns. We are willing to pay for clean air, clean lakes and clean streets—at least I hope we are. We should also be willing to pay for clean elections.

Moreover, a moment's reflection also reminds us that perpetuation of the present system of campaign financing is far more advantageous to we who are incumbents, than would be a fair system of adequate funding insured for both incumbent and challenger alike.

We need not worry about the cry that the only reason for the low rating of politicians in the polls is a cynicism generated by our debate on this measure, itself. Clearly that claim presumes an exaggerated view of the impact our debate here has on millions of citizens who already have formed strong opinions about the trust their Government deserves. And it most seriously underestimates the devastating effect the past 2 years' revelations have had on the public's view of honesty and responsiveness in Washington.

Of course, campaign finance reform is not a panacea for all the ills of Watergate. No one has suggested that. It will not provide a safeguard against perversion of the processes of justice to cover up scandal, or curb the potential for invoking "national security" to cloak constitutional abuses.

But it is the single most constructive step we can take right now to minimize the pressures for illegal actions, to reduce the potential for financial manipulations which generate their own corruptive momentum, and to help restore the essential public confidence in Government.

As Senator MANSFIELD observed in his *state of the Congress address:*

> We shall not finally come to grips with the problems except as we are prepared to pay for the public business of elections with public funds.

Now let us look at the bill before us. Under the leadership of the distinguished chairman of the Rules Committee (Mr. CANNON) and the chairman of the Subcommittee on Privileges and Elections (Mr. PELL) the committee has provided a comprehensive, fair yet far-reaching bill. The committee report indicates great sensitivity to the issues of policy such as the impact of its proposal on our party system, the constitutionality of schemes to screen candidates and distinguish between major and minor parties, the problem of Federal control of campaigns, and other important questions. The report, and the hearings of the committee, belie the claim that the bill is based on hasty, ill-considered action, without adequate attention to the underlying issues involved in campaign finance.

S. 3044 incorporates the provisions for spending and contribution limits and a strong independent commission to enforce the Federal elections laws, all of which the Senate passed last summer as part of S. 372 which now awaits action in the House.

It provides for Federal assistance to qualified candidates in primary elections for nomination in congressional and Presidential races. After raising a threshold fund to demonstrate some significant base of support, primary candidates would be eligible to receive Federal assistance on a matching basis for every $100 per contributor.

In the general elections, once having received their party's nomination, all major party House, Senate, and Presidential candidates are entitled to Federal payments equal to their overall spending limit. However, they may take as much or little of this available fund as they wish, and raise the rest of their campaign funds in allowable private contributions.

Minor party candidates would receive a proportionate share of the assistance available to major party candidates in general elections.

Without discussing all of the bill's provisions, I do wish to comment on four major criticisms which have been leveled against the committee bill. First, the question of why any public financing is necessary; second, the argument that private financing should play the dominant role; third, the opposition to including primaries in any financing scheme; and finally, questions about the proposal's constitutionality.

WHY IS THE PUBLIC FINANCING NECESSARY?

The most fundamental objection to S. 3044 is the claim that low contribution limits will take care of the "corruption image." If you eliminate the potential influence of large gifts that takes care of Watergate, the argument goes, so why get bogged down in the tricky problems of devising a fair, workable public funding scheme?

This is a myopic view of meaningful campaign reform. We should not deal with the Watergate horrors in a way which will perpetuate and intensify the pervasive advantage enjoyed by incumbents in their bid for reelection.

In large states such as my own, California or New York, Senate campaigns are costly. The funds for an adequately informative, competitive race will be difficult to raise, even for a well-known incumbent, in the small amounts we seek to impose as contribution limits for any one donor.

Without substantial public financing, the great danger is that nonincumbent challengers will have even more difficulty raising adequate resources.

This crucial point has been obscured by repeated reference to the wonderful involvement of thousands of citizens contributing a few dollars from their cookie jar for the candidate of their choice. That is indeed an appealing image and of course I encourage and endorse the desirability of full citizen involvement in politics. But that does not mean that truly small contributions will be an adequate source of funds for large, expensive campaigns.

The committee report focused this issue sharply, at page 5:

> The only way in which Congress can eliminate reliance on large private contributions and still ensure adequate presentation to the electorate of opposing viewpoints of competing candidates is through comprehensive public financing.
>
> Modern campaigns are increasingly expensive and the necessary fundraising is a great drain on the time and energies of the candidate. Low contribution limits alone will compound the problem. . . . Drastically reducing the amounts which may be expended by the candidate would ease this burden, but at the cost of increasing the present disadvantage for non-incumbent challengers and endangering the whole process of political competition.

That, Mr. President, is why we must pass a bill with both contribution limits and comprehensive public financing for Federal elections.

PRIMARY RELIANCE ON PUBLIC FINANCING

Some of my colleagues who favor a modest amount of public assistance, oppose the availability of full public funding. They argue that the availability of substantial public funds should turn on the candidate's ability to raise first an equally large amount of private donations.

At bottom, this reflects the view that if a candidate has less support at the outset of a campaign—perhaps because he is not as well known as his incumbent opponent—it is appropriate that he has less resources with which to campaign. I would prefer a fairer approach to competitive elections.

The danger of primary reliance on a matching fund approach is the self-perpetuating advantage for the candidate who is initially better known. He would usually be able to raise more private contributions of small denomination than could his opponent. This would bring larger sums of Federal matching funds, and he could then mount a more elaborate campaign than his challenger to raise even more private funds, which would then be matched with more Federal money, and so on.

The use of matching funds to provide an ongoing test of support may be a valid screening technique in the primaries. But once a major party has chosen a candidate, we are no longer concerned with screening frivolous candidacies. Both candidates in the general election should have adequate resources to seek support from the voters during the campaign, including the support of those initially inclined to favor their opponent.

With primary reliance on matching small contributions, a less well-known challenger must bootstrap his campaign by winning additional support before he can get enough Federal assistance to mount a fully competitive campaign. The Federal Government would be interposing a pre-election popularity contest before the voters have had an opportunity to hear a full debate of the issues. Instead, the voters choice should be tested in November at the end of the campaign, and not at its outset.

SHOULD PRIMARY ELECTIONS BE INCLUDED

Unfortunately, I am sure that the same intense pressure to eliminate primary elections from the public financing feature of S. 3044 exerted during the Senate's deliberation will also be felt in the House.

The logic in favor of including all elections is simple, but compelling. It is impossible to justify the expenditure of substantial public funds in order to help purify the political process, if the candidates receiving that assistance must still raise the full costs of expensive primary campaigns from private contributors in order to win their party's nomination in the first place. Meaningful reform of campaign financing practices requires inclusion of primary as well as general election.

CONSTITUTIONAL ISSUES RAISED REGARDING S. 3044

Finally, Mr. President, a few words are in order in response to the continued suggestions, although often vague, that this bill would be found unconstitutional.

First, some suggest it is unconstitutional to limit the amount which a person can contribute to my campaign, or to limit the total amount I can spend.

However, the Senate has already faced that issue twice, in 1971 and again last summer. Each time, we decisively found that the power to preserve the integrity of the electoral process, as well as the underlying purpose of the first amendment to prevent oligopoly in the political marketplace by a powerful few, provides ample basis for reasonable regulation.

Next it was suggested that the threshold fund used to screen out frivolous candidates in primary elections imposes an unconstitutional burden on some political aspirants. But as the committee report notes, the Supreme Court has upheld the use of filing fees and other charges as a means of preventing a proliferation of candidates. Similarly, the Court has approved differential treatment of major and minor parties, based on past performance at the polls, if the difference is reasonably related to a state interest such as the desire to avoid splintering a coherent party system. See *Bullock* v. *Carter* 405 U.S. 134 (1971); *Jeness* v. *Fortson* 403 U.S. 431 (1971).

The committee bill would not freeze the status quo; it does not prevent any political party from getting its candidate on the ballot, nor from organizing resources to support them.

As the Supreme Court recognized in the Jeness case:

> Sometimes the grossest discrimination can lie in treating things that are different as though they were exactly alike. 403 U.S. at 442.

Only a few weeks ago, the Supreme Court reaffirmed these principles in two decisions, Storer against Brown—March 26, 1974—and American Party against White—March 26, 1974.

On the basis of these decisions and other cases dealing with the regulation of elections and the treatment of major, minor, and independent candidates, I am convinced the measure would be upheld as a reasoinable, fair, and workable scheme to promote the integrity of elections, to insure the influence of many diverse points of view in the political marketplace, and to balance these goals against the other first amendment and equally protection interests which are involved.

To end where I began, Mr. President, this proposal for public financing would not guarantee the election of wise and honest men and women. But it would remove the major cause of cynicism and distrust in our system. Now is the time to act to remove the distorting effect of reliance on private fundraising both from the campaign and from the operation of Government.

Mr. HUGH SCOTT. Mr. President, I ask unanimous consent, with the consent of the distinguished Senator from Iowa (Mr. CLARK), that his pending amendment, No. 1013, be temporarily laid aside in order that I may call up my amendment No. 988, and I do this with the understanding that the Senator from Iowa (Mr. CLARK) not lose his right to the floor following disposition of my amendment.

The PRESIDING OFFICER (Mr. DOMENICI). Without objection, it is so ordered.

Mr. HUGH SCOTT. Mr. President, this is a very minor amendment.

The PRESIDING OFFICER. The clerk will read amendment No. 988.

The legislative clerk read the amendment offered by Mr. HUGH SCOTT for himself and Mr. KENNEDY (No. 988) as follows:

> On page 19, after the period in line 19, insert the following: "The Secretary of the Treasury may accept and credit to the fund money received in the form of a donation, gift, legacy, or bequest, or otherwise contributed to the fund.".

Mr. HUGH SCOTT. Mr. President, this is a very minor matter which is proposed on behalf of the distinguished Senator from Massachusetts (Mr. KENNEDY) and myself. It has to do with the fact that under present law individuals may make tax-deductible contributions to candidates.

The Presidential election campaign fund at the Treasury Department is financed solely from dollars checked off on income tax returns, and therefore the Treasury Department advises us it will not accept small contributions earmarked for this fund.

Amendment No. 988 simply authorizes the Secretary of the Treasury to receive private contributions and earmark them for the fund is so requested. These contributions would be tax deductible, as is the case under present law, with respect to direct contributions to candidates.

This has to do with a contribution of the Senator from Massachusetts and myself of $75 each, representing payment for two newspaper articles, which was accepted by the Treasury as a gift to the Treasury but which could not be earmarked. Therefore, the purpose of the amendment is to permit earmarking. It is not ex post facto at all.

Mr. President, I understand the amendment has been cleared with the Senator from Kentucky (Mr. COOK) and with the manager of the bill on the majority side of the aisle, and I ask for its immediate consideration.

The PRESIDING OFFICER. Who yields time?

Mr. CANNON. Mr. President, I yield myself 1 minute.

I would like to ask a question. The Senator said this amendment would permit earmarking for tax credit purposes. I do not think it would permit earmarking other than insofar as its being deposited to go to this special account.

Mr. HUGH SCOTT. That is right.

Mr. CANNON. So it could not be earmarked for any other purpose.

Mr. HUGH SCOTT. Oh, no, not for any purpose except being channeled to this fund instead of being channeled to the general Treasury, as it is now.

Mr. CANNON. The Senator also mentioned that a tax deduction could be

taken. I do not think it could be taken without another change elsewhere in the law.

Mr. HUGH SCOTT. I am advised by the Treasury that a tax deduction can be taken, but only as a charitable contribution.

This may be a surprise to the Senator, but the U.S. Treasury is considered a charity in this regard.

Mr. CANNON. I did not think it was a charity, but a tax credit could be taken as a charitable contribution.

With that explanation, I am willing to accept the amendment.

Mr. KENNEDY. Mr. President, I am pleased to join the distinguished minority leader, Senator HUGH SCOTT, in proposing the pending amendment. By authorizing the Secretary of the Treasury to accept tax-deductible gifts earmarked for the Federal election campaign fund, the amendment will establish a constructive supplement to the dollar checkoff under existing law.

As we know, the preliminary results under the dollar checkoff for the 1973 tax year are highly encouraging. Approximately 15 percent of the returns being filed are using the checkoff. At the present rate, the campaign fund in the Treasury will contain upwards of $50 million by 1976, or more than enough to make the 1976 Presidential election a historic first—paid for entirely out of public funds.

But more is necessary, especially if the dollar checkoff is to be adequate for financing other Federal elections out of public funds. My hope is that, as the checkoff becomes more familiar to taxpayers, its use will continue to increase, so that the Federal election campaign fund will be sufficient to pay for all Federal elections.

In the interim, the pending amendment is a useful method to supplement the dollar checkoff fund. Under current law, taxpayers are entitled to a charitable deduction for gifts made to the Treasury. However, unless there is a specific authorization in the law allowing gifts to be made for a specified program, the gifts simply go into the general fund of the Treasury. The pending amendment would enable taxpayers to earmark their gifts for the Federal election campaign fund, and I am pleased that the managers are willing to accept it.

Mr. CANNON. I yield back my time.

Mr. HUGH SCOTT. I yield back my time.

The PRESIDING OFFICER. All time having been yielded back, the question is on agreeing to the amendment offered by the Senator from Pennsylvania for himself and the Senator from Massachusetts (Mr. KENNEDY), No. 988.

The amendment was agreed to.

Mr. CLARK. Mr. President, on behalf of myself and Senators BELLMON, CRANSTON, HART, GRAVEL, MATHIAS, and SCHWEIKER, I call up my amendment No. 1013. I ask unanimous consent to modify the amendment to make technical corrections.

The PRESIDING OFFICER. Is there objection?

Mr. CANNON. Mr. President, what was the request?

The PRESIDING OFFICER. Will the Senator restate the request?

Mr. CLARK. I ask unanimous consent to make a technical correction in amendment No. 1013.

Mr. CANNON. Mr. President, reserving the right to object, may I ask the Senator to state the nature of the technical correct? I would like to know whether it is going to change in essence some important provision of the amendment.

Mr. CLARK. It would not change any important provision of the amendment. It is my understanding it would not be in order if it did. We had talked with the Parliamentarian previously to make sure it was not a substantial change.

I send a copy of the technical correction to the manager to look at. It simply clarifies a definition somewhat, we felt.

Mr. CANNON. Mr. President, I have no objection.

The PRESIDING OFFICER. Without objection, the amendment is so modified.

The amendments, as modified, are as follows:

On page 75, line 21, strike out "nomination for election, or".

On page 76, strike out line 19 through line 22 and insert in lieu thereof the following:

"(3) For purposes of this section, the term 'campaign' includes all primary, primary runoff, and general election campaigns related to a specific general election, and all primary, primary runoff, and special election campaigns related to a specific special election.".

Mr. CLARK. Mr. President, I ask unanimous consent that following the disposal of this amendment my Amendment No. 1118 be the next order of business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CLARK. Mr. President, as it now stands, S. 3044 sets a contribution limitation of $3,000 for individuals and $6,000 for organizations, applied separately to primary, primary run-off, and general elections.

Our amendment has one simple effect: it would eliminate the bill's distinction between primaries, primary run-offs, and general elections, setting a true contribution limit of $3,000 for individuals and $6,000 for organizations, applied to a candidate's entire campaign for public office.

Throughout the debate on S. 3044, many Senators have referred to the $3,000 contribution limitation in the bill. But, in fact, the limitation now in effect in S. 3044 sets a much higher limit. In any given campaign, an individual might actually be able to contribute $6,000 altogether—$3,000 in the primary and $3,000 in the general election—or even $9,000 if there were a primary runoff. For organizations, the limit could be as much as $18,000.

The Rules Committee has incorporated the contribution limits set in S. 372 in the present bill. But S. 372 had no provisions for public financing—it was merely an attempt to limit campaign expenditures and private contributions.

However, with the comprehensive public financing system in the bill now, there is no need to allow such excessive contributions—up to $9,000 for individuals and $18,000 for organizations. This amendment would put those limits at $3,000 and $6,000 respectively.

Three thousand dollars is a large chunk of money in any campaign. No individual contributed more than $3,000 to my campaign, and I am sure that many of my colleagues had the same experience. Clearly, a $3,000 limitation, with $6,000 for groups, is not going to cause any hardship for anyone, whether or not they decide to use public financing.

Even the $3,000 and $6,000 limitations this amendment proposes are excessive—a person or organization contributing this much would obviously enjoy more access than the average voter, and I think everyone is aware of that.

But more important than the actual effect of these large donations is the question of how they will be viewed by the public. To the average American, $9,000 or $18,000 is an incredibly large amount for a candidate for public office to accept from any single individual or group. But the present legislation would permit just such contributions.

The limits proposed in this amendment still represent big money, but a contribution limit of this kind would at least be a step in the right direction. And the American people would know it.

The Rules Committee bill represents a truly significant reform of the American political process. I think all of us have been continually impressed by Chairman CANNON's skillful handling of the legislation, and by the commitment to meaningful campaign reform demonstrated by a majority of the Senate. I believe this amendment is fully consistent with the scope and intent of S. 3044, and I urge its adoption.

Mr. CANNON. Mr. President, I yield myself 5 minutes.

We have gone up the hill and down again on this particular issue. We have seen before, in the course of debate on the bill, amendments to change the limits on contributions. The Senator from Iowa has pointed out that the amounts ought to be cut in half from what we have in the bill now, because of the matching portion of public financing. But we do not authorize a candidate to go to public financing. If we were to adopt this amendment, it is quite likely we would force every candidate to go to public financing, whereas some of them if they were given reasonable enough limits, might desire to go the private financing route. But if they did, they would then be still more unduly restricted, as under S. 372, and much more unduly restricted than we have desired to restrict them.

I urge that the Senate stand fast on the position it has already taken by voting to reject this amendment.

Mr. President, I reserve the remainder of my time.

Mr. CLARK. Mr. President, in answer to the distinguished Senator from Nevada on his particular point, I think it is still possible and very practical for a candidate to run a campaign on private financing and keep within the $3,000 or $6,000 limitation. I say that out of personal experience, because, as the RECORD will show, in the 1972 campaign I accepted no contributions in excess of

$3,000. There are many Senators who have committed themelves to accept no more than that in the coming campaign of 1974. Some have a limitation as strict as $1,000; some $2,000; others, $3,000. They will not receive any public financing in the 1974 campaign. So although some restrictions are imposed, a candidate cannot take $18,000, in the case of groups, and he cannot take in excess of $3,000, in the case of individuals. He can take only $3,000. That is the intent of the amendment. It seems to me that when we talk about taking amounts such as $7,000, $8,000, $9,000, or $10,000, from individuals, we are talking about a very, very heavy influence on the person who receives such a large contribution.

Mr. President, I ask for the yeas and nays on this amendment.

The yeas and nays were not ordered.

Mr. CLARK. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, I ask for the yeas and nays on the Clark amendment.

The yeas and nays were ordered.

Mr. CANNON. Mr. President, I move to lay the amendment on the table, and I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESEDING OFFICER. The question is on agreeing to the motion of the Senator from Nevada (Mr. CANNON) to lay the amendment of the Senator from Iowa (Mr. CLARK) on the table. The yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), and the Senator from Wyoming (Mr. MCGEE) are necessarily absent.

Mr. HUGH SCOTT. I announce that the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), and the Senator from Michigan (Mr. GRIFFIN) are necessarily absent.

I also announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

The result was announced—yeas 37, nays 54, as follows:

[No. 134 Leg.]

YEAS—37

Baker	Ervin	Pastore
Bennett	Fannin	Pell
Bentsen	Hansen	Percy
Bible	Hartke	Ribicoff
Brock	Hatfield	Scott, Hugh
Buckley	Hathaway	Stennis
Byrd, Harry F., Jr.	Hruska	Stevens
Cannon	Huddleston	Talmadge
Cook	Magnuson	Tower
Curtis	McGovern	Tunney
Dominick	Metzenbaum	Weicker
Eastland	Montoya	Williams
	Moss	

NAYS—54

Abourezk	Eagleton	Metcalf
Aiken	Fulbright	Mondale
Allen	Gravel	Muskie
Bartlett	Gurney	Nelson
Bayh	Hart	Nunn
Beall	Haskell	Packwood
Bellmon	Helms	Pearson
Biden	Hollings	Proxmire
Brooke	Humphrey	Randolph
Burdick	Jackson	Roth
Byrd, Robert C.	Javits	Schweiker
Case	Johnston	Sparkman
Chiles	Kennedy	Stafford
Clark	Mansfield	Stevenson
Cotton	Mathias	Symington
Cranston	McClellan	Taft
Dole	McClure	Thurmond
Domenici	McIntyre	Young

NOT VOTING—9

Church	Hughes	Scott, William L.
Fong	Inouye	
Goldwater	Long	
Griffin	McGee	

So the motion to lay on the table was rejected.

The PRESIDING OFFICER. The question recurs on agreeing to the amendment of the Senator from Iowa (Mr. CLARK).

On this question the yeas and nays have been ordered.

Mr. CANNON. Mr. President, I yield myself 2 minutes to explain to my colleagues what this amendment will do, because I think many of them do not understand what the amendment would do.

The PRESIDING OFFICER. Time on the amendment has expired.

Mr. CANNON. Mr. President, this Senator has not used all of his time on the amendment. He used only 2 minutes on the amendment. No one else has used the time.

The PRESIDING OFFICER. The Senator is correct.

The Senator from Nevada is recognized.

Mr. CANNON. Mr. President, under the——

Mr. CHILES. Mr. President, would a motion to table be in order after the time has been yielded back?

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senator from Nevada may proceed for 2 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered, and the Senator from Nevada is recognized for 2 minutes.

Mr. CANNON. Mr. President, the bill's provisions with relation to private contributions is such that a person can receive a contribution of not to exceed $3,000 from another person for any one election—a primary, a runoff, or a general election.

If this amendment is adopted, it would limit the $3,000 in contributions to a one-time contribution for any election—for the total election. So that in a year, if a person had a primary election, a runoff election, and a general election, the maximum private contribution that could be received from one person would be $3,000 rather than $3,000 per election as it is under the bill.

This would automatically have the effect of driving a candidate toward public financing, because of his inability to raise adequate amounts.

I yield back the remainder of my time.

Mr. CLARK. Mr. President, I would simply like to add to the statement of the distinguished Senator from Nevada by saying that he states the amendment very accurately and very exactly. That is the intent of the amendment, to prevent any individual from contributing more than $3,000 in that campaign—in other words, in the primary, in the runoff, and in the general. Otherwise, we do not have a $3,000 limitation but a $9,000 limitation from any individual, and $9,000 from that individual's spouse if they so desire; or an $18,000 limitation in the case of organizations.

That is the purpose of this amendment, to restrict it to $3,000 for individuals and $6,000 for groups.

The PRESIDING OFFICER. All time having been yielded back on this amendment, the question is on agreeing to the amendment of the Senator from Iowa (Mr. CLARK).

On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), and the Senator from Wyoming (Mr. MCGEE) are necessarily absent.

Mr. HUGH SCOTT. I announce that the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), the Senator from Illinois (Mr. PERCY), and the Senator from North Dakota (Mr. YOUNG) are necessarily absent.

I also announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

The result was announced—yeas 65, nays 24, as follows:

[No. 135 Leg.]

YEAS—65

Abourezk	Dole	Metcalf
Aiken	Domenici	Metzenbaum
Allen	Eagleton	Mondale
Bartlett	Ervin	Moss
Bayh	Fulbright	Muskie
Beall	Gravel	Nelson
Bellmon	Gurney	Nunn
Bennett	Hart	Packwood
Bentsen	Hartke	Pastore
Bible	Haskell	Pearson
Biden	Hatfield	Proxmire
Brooke	Helms	Randolph
Buckley	Hollings	Ribicoff
Burdick	Humphrey	Roth
Byrd, Harry F., Jr.	Jackson	Schweiker
Byrd, Robert C.	Johnston	Stafford
Case	Kennedy	Stevens
Chiles	Magnuson	Stevenson
Clark	Mansfield	Symington
Cotton	Mathias	Taft
Cranston	McClure	Thurmond
	McIntyre	Williams

NAYS—24

Baker	Hansen	Pell
Brock	Hathaway	Scott, Hugh
Cannon	Hruska	Sparkman
Cook	Huddleston	Stennis
Curtis	Javits	Talmadge
Dominick	McClellan	Tower
Eastland	McGovern	Tunney
Fannin	Montoya	Weicker

NOT VOTING—11

Church	Hughes	Percy
Fong	Inouye	Scott,
Goldwater	Long	William L.
Griffin	McGee	Young

So Mr. CLARK's amendment was agreed to.

Mr. CLARK. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CHILES. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of amendment No. 1118 proposed by the Senator from Iowa (Mr. CLARK).

The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

The amendment is as follows:

On page 7, line 9, strike out "$10,000;" and insert in lieu thereof "$5,000;".

On page 7, line 14, strike out "20 percent" and insert in lieu thereof "10 percent".

Mr. CLARK. Mr. President, I offer this amendment on behalf of myself and Senators BEALL and MATHIAS.

Mr. President, I ask unanimous consent to modify my amendment.

The PRESIDING OFFICER. Is there objection?

Mr. CANNON. Mr. President, reserving the right to object, I would like to know the nature of the perfecting amendment first.

The PRESIDING OFFICER. The modification will be stated.

The assistant legislative clerk read as follows:

After line 4, insert the following:

On page 7, line 17, strike out "$125,000;" and insert in lieu thereof "$75,000;"

The PRESIDING OFFICER. Is there objection to the modification? Without objection, the amendment is so modified.

Mr. CLARK. Mr. President, this amendment would reduce the threshold amounts required under the bill to qualify for matching public payments in congressional and senatorial primary elections. It cuts in half the levels set in the committee bill.

Although these limits are intended to prevent frivolous candidates from receiving public financing, the threshold amounts set by the committee are so high that they will almost certainly preclude public financing for many serious candidates as well.

Some of the opponents of S. 3044 have called the bill an "incumbency protection bill," charging that public financing will inevitably favor incumbent office holders. Chairman CANNON and the Rules Committee have very scrupulously maintained the rights of challengers in this legislation, and it should be done here as well.

But the primary threshold amounts—set as high as they are—represent an exception. Incumbents could reach the threshold easily—a single hundred-dollar-a-plate dinner might be enough. But for challengers, it would be an overwhelming task. As Senator BEALL said during debate on March 27:

Sometimes there is a difference between demonstrating public support and collecting money. Sometimes one can get the votes but not the dollars to back up the votes.

It seems to me that by using this formula, a terrible burden is placed upon those people who might want to challenge an incumbent in a primary, and I do not think that is in keeping with the purpose of the legislation.

I started out by saying that I am not opposed to public financing combined with private financing. But I am opposed to public financing that discriminates against people who want to challenge the incumbents.

The best example I can offer of the dangers inherent in this section of the committee bill is the Democratic races for the House and Senate in Iowa in 1972. Altogether, there were nine Democrats competing for the nominations for six House seats and one Senate seat. Mr. President, not a single one of us would have qualified for public financing under the committee formula.

And I am not talking about frivolous candidates. Of the seven who were nominated, not one candidate received less than 45 percent of the vote in the general election. Four of us were elected to the Congress, and three of us defeated incumbents in the process. But again, not a single one of us would have been able to get public financing in the primary under the committee bill.

It is also very interesting to examine the 1972 campaigns of the 13 freshman Senators.

According to reports filed 5 days before the primary, at least 7 of the 13 would not have qualified for public financing in the primary under the present formula. Of the six others, of course, there were three incumbent Congressmen, an incumbent Governor, and an incumbent mayor of the State's largest city. The seven of us were not frivolous candidates—after all, we won. But under the committee's requirements we would not have been able to demonstrate enough public support to qualify for matching public funds.

Mr. President, we are not dealing with a threshold which must be raised to receive a flat subsidy. We are only talking about a level which must be met before the Government will match small contributions on a dollar for dollar basis. The Rules Committee correctly states in its report that one of our primary goals must be to—

Ensure adequate presentation to the electorate of opposing viewpoints of competing candidates through comprehensive public financing.

We can take a step toward achieving that goal by passing this amendment and cutting the threshold amount for public financing in the primaries.

Mr. President, I reserve the remainder of my time.

Mr. CANNON. Mr. President, I yield myself 2 minutes.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. CANNON. Mr. President, I do not have any strong feelings one way or the other about the amendment. For people who oppose public financing this means it is easier to get public financing. It lowers the threshold amount in the case of Representatives from $10,000 to $5,000 and in the case of a candidate for the Senate from $25,000 to $12,500.

Now it was the feeling of the committee we should have some reasonable threshold amount to demonstrate that a man had some sort of public appeal before he could go the public financing route.

As far as I am concerned, if the Senate wants to, it can take away all the threshold and just say everybody is eligible. We did not think it was a good idea.

I reserve the remainder of my time.

Mr. CLARK. Mr. President, I yield to the Senator from Maryland (Mr. BEALL).

Mr. BEALL. Mr. President, I rise in support of the amendment offered by the Senator from Iowa. As he pointed out, both Senator MATHIAS and I are cosponsors of the amendment. He also alluded to the colloquy I had, on the first day of the debate, with the distinguished chairman of the Rules Committee on this subject matter. I used the Republican Party of Maryland as an example of an unfair advantage that would be given to an incumbent if we allowed the 20 percent threshold to remain in the bill before a candidate would become eligible for his share of public financing.

In the State of Maryland, unfortunately, there are only 480,000 Republicans, but 1.5 million Democrats. We would be allowed under the bill, because we have a voting-age population of 2.7 million, at the rate of 10 cents per voting age population, $270,000 in primary elections. If we take 20 percent of that, it comes to $54,000.

I think it is absurd to expect that someone can raise $54,000 in a primary when only 480,000 voters are registered in his party. This is excessive. I think that it is impossible for any challenger to raise $54,000 when he is running against an incumbent, especially when he has only 480,000 voters registered in his party, because we have a limit on contributions, and it would be very, very difficult for anybody to challenge an incumbent.

I think if we are going to move in the direction of public financing, then we had better make sure that we are not making the Congress of the United States a self-perpetuating body. It seems to me that is just what we are doing if we are creating the high thresholds where challengers will not be able to get the kind of money they need to participate in public funds.

I think it should go further, but I think it is extremely reasonable to lower the threshold from 20 to 10 percent. Therefore, I hope the Senate will adopt the amendment in order to make it fair to those who are going to be involved in future primaries.

The PRESIDING OFFICER. Who yields time?

Do Senators yield back their time?

Mr. CLARK. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. CLARK. Mr. President, I yield back my remaining time on the amendment.

Mr. CANNON. Mr. President, I yield back my time.

The PRESIDING OFFICER. All time having been yielded back on the amendment, the question is on agreeing to the amendment of the Senator from Iowa (Mr. CLARK), as modified. The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Iowa (Mr. HUGHES), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), the Senator from Wyoming (Mr. MCGEE), the Senator from Arkansas (Mr. FULBRIGHT), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. HUGH SCOTT. I announce that the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), and the Senator from Illinois (Mr. PERCY), are necessarily absent.

I also announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

The result was announced—yeas 34, nays 54, as follows:

[No. 136 Leg.]

YEAS—34

Abourezk	Cranston	Mondale
Aiken	Hart	Montoya
Beall	Hartke	Nelson
Bible	Haskell	Packwood
Biden	Hatfield	Proxmire
Brooke	Hathaway	Randolph
Buckley	Humphrey	Ribicoff
Burdick	Johnston	Schweiker
Case	Mathias	Weicker
Chiles	McIntyre	Williams
Clark	Metcalf	
Cook	Metzenbaum	

NAYS—54

Allen	Ervin	Nunn
Baker	Fannin	Pastore
Bartlett	Gravel	Pearson
Bayh	Gurney	Pell
Bellmon	Hansen	Roth
Bennett	Helms	Scott, Hugh
Bentsen	Hollings	Sparkman
Brock	Hruska	Stafford
Byrd, Harry F., Jr.	Huddleston	Stevens
Byrd, Robert C.	Jackson	Stevenson
Cannon	Javits	Symington
Cotton	Kennedy	Taft
Curtis	Magnuson	Talmadge
Dole	Mansfield	Thurmond
Domenici	McClellan	Tower
Dominick	McClure	Tunney
Eagleton	McGovern	Young
Eastland	Moss	
	Muskie	

NOT VOTING—12

Church	Hughes	Scott, William L.
Fong	Inouye	Stennis
Fulbright	Long	
Goldwater	McGee	
Griffin	Percy	

So the Clark amendment, as modified, was rejected.

Mr. CRANSTON obtained the floor.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. CRANSTON. Mr. President, I yield to the distinguished Senator from New York.

Mr. JAVITS. Mr. President, I shall use my own time, of course, but I intend to limit my remarks on the amendment to 5 minutes.

I call up my amendment No. 1185 and ask that it be read.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 15, line 11, after the word "held" insert the following: "(except that if the office sought is President or Senator the amount shall be 14 cents)".

Mr. JAVITS. Mr. President, this amendment proposes to restore, for the offices of President and Senator, the amount of 14 cents per voter instead of 12 cents which resulted from the Allen amendment, which was successful here by a vote of 46 to 43.

The reason for limiting it to President and Senator is twofold. First, not to reargue the Allen amendment, which would not be fair to Senator Allen nor to the Senate, I omit the Members of the House of Representatives; and second, because it really is not necessary to include the Members of the House of Representatives, as they have a limit of $90,000, which, considering the general population of congressional districts, which is under one-half million, is not out of line with either the 12-cent figure or the 14-cent figure.

The amendment applies only to elections, not to primaries. I am not seeking to change that at all. But the fact is that this is a qualified amendment; and the reason I give the Senate this opportunity is the fact that really the amounts are getting down to the point where, with any kind of big State, and small States are even more affected, where a Senator like myself or any other Senator who has had considerable time in the Senate has to go to the people with so many issues—it is simple, after all, to take a Senator apart when we vote here 400 or 500 times a year, and when votes are connected in philosophy or have a historical relationship, or you have strategic or tactical situations that face you—and you try to run around in a State with 15 million people, even 15 cents speedily fails.

I do not mind telling the Senate I ran, with the aid of my State committee, a campaign in 1968 that cost me, aside from the help they might give, about $1,250,000. That same campaign would cost about $2 million today, and if you subtract the State—and many State organizations now do not want to get involved with Federal law—you run into a campaign that may cost $2,500,000 to $3,000,000.

I cannot raise that. I cannot afford it. But if the committee thought 15 cents was a reasonable figure, I think we ought to have an opportunity to vote on a figure larger than that now set, which I consider too low.

All you have to do is deduct one-fifteenth from the column 15 cents for the Presidency; that results in roughly $19 million for the Presidency, rather than the figures which are set up here, $21 million-something for the 15-cent fund, and similarly down that column.

I simply lay this question before the Senate: Under these conditions, the only chance we have to somewhat raise the figures, for purposes of negotiation with the other body, is in an amendment that is qualified. This is qualified.

I ask unanimous consent that the names of Senators MONDALE and DOLE be added as cosponsors of the amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. Who yields time?

Mr. CANNON. Mr. President, I yield myself 2 minutes.

I would hope that the Senate would not change the position it has already taken on this particular issue. It is true that the committee reported the 15 cents in the general election and the 10 cents in the primary, but that issue has been debated on the Senate floor, and we did reduce it by a vote to 12 cents and 8 cents. I voted for that amendment; I think it was a good amendment.

I will say to my colleague that while he indicates that in a State such as his he may be limited, the limit applies both ways; it also applies on whoever the opponent or challenger may be.

One of the purposes of the overall bill is to try to contain or restrain the cost of campaigns. We are not going to restrain them if we fix the limit that can be spent at higher than is normally spent.

With the exception of a few races in the last election—I do not recall the exact number, but there were not many races that did exceed, though some of them exceeded very materially, the li[illegible] we have set in the bill.

I would point out that under the limited bill now, for the State of New York, a candidate there could spend, in the primary, $1,213,000 and could again spend $1,508,000 in the general election under the bill as it now stands. If the Senate should adopt this amendment, it would increase that amount for the general election by roughly $126,000, it would appear.

So I say to my colleague that I believe we have settled this matter in a reasonable fashion. I think if we are going to try to contain the cost of the campaign, we have got to fix limits, not just fix a figure far above that which we have expended.

I reserve the remainder of my time.

Mr. JAVITS. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. JAVITS. I will yield myself 1 more minute to reply, and that is all. We h[illegible] very completely argued these ques[illegible] before.

All that I say is this: It is as tough for the challenger as for the challenged, in view of the enormous increase in costs, and I do not see any disposition on the part of the American people not to want a campaign which reveals the positions of both sides. That costs money, unfortunately, in this particular society.

When you realize that there are city campaigns which cost $2 and $3 million for a candidate for mayor, I do not think these sums, at a 14-cent level, are at all out of line. I have given the Senate my own figures. These I know. I sweated blood raising them, so I know them only too well.

I am not anxious to make them more, but it is simply, in my judgment, the necessities of the situation.

Finally, we always talk a lot about committee deliberations, with the committee hearing evidence, thinking it over, and debating it in committee, so that

they come to the right conclusion. Here we have a committee, and the manager of the bill says they did not come to the right conclusion, that he voted against it. So, since he voted against it, he has got to vote against it again.

I hope very much that will not be the logic of the Senate. The committee came up with 15 cents. The Senate, by a majority of 46 to 43, reduced it to 12 cents. Here is an opportunity to again come closer to the amount the committee, which deliberated, provided.

The PRESIDING OFFICER. Who yields time?

Mr. DOMINICK. Mr. President, I think I have an hour, if I wanted to talk that long.

The PRESIDING OFFICER. The Senator is correct.

Mr. DOMINICK. I yield myself 2 minutes, in order to back up my distinguished friend from New York. I am sure everyone will say that if he and I are on the same side on this issue, one of us is obviously wrong, but we will find out pretty quickly.

I will say to the Senate as a whole that I think, to begin with, this whole bill is unconstitutional. I do not think you put a limit on the right of any individual to support in any legal way that he wants to the candidate of his choice. I think that is what we have attempted to do. One three-judge Federal court has already so ruled, in connection with the bill that is now part of the law. The ruling has not been appealed. They ruled on that ground, that this is a violation of the first amendment, and I think that is exactly what it is.

Second. I think we have sought to do indirectly, by what my distinguished friend from Alabama did and as a matter of fact what this bill does, what we cannot do directly; namely, limit the amount you can expend; and you have to include whatever anyone expends, no matter whether they have any connection with you or not, as an overall limitation; thus we are denying them the right to support the candidates of their choice.

Third. As I think everyone has known from the beginning, I am and always have been totally opposed to public financing. I think it is a real rip-off of the taxpayer. That is not a part of this amendment, which would seem to me only sensible, that if we are going to have an unconstitutional bill, which I think is a disaster from beginning to end, and I think we are all acting as masochists, if I may say so, to the detriment of the taxpayer, then we ought to have a limit which is high enough. So I am happy to support it and will support the amendment but I am going to vote against the whole bill no matter what happens.

Mr. ALLEN. Mr. President, I yield myself 4 minutes.

The PRESIDING OFFICER. The Senator from Alabama is recognized for 4 minutes.

Mr. ALLEN. What this amendment seeks to do is to go over ground that the Senate went over yesterday. It seeks, in effect, to reconsider the vote which was taken on yesterday, and one motion to reconsider has already been made and tabled. So actually this is a method of doing indirectly what the Senator is prevented from doing under the rules directly; that is, reconsidering that vote and offering his own amendment. The distinguished Senator had the opportunity yesterday. If he thought there was some magic to the 14-cent figure, he could have offered that as an amendment when the Senator from Alabama put in the amendment calling for a 12-cent per person of voting age limitation on the general election. He saw fit not to do that.

After the Senate has acted and a motion to reconsider has been made and tabled, the distinguished Senator from New York comes in and says that a subsidy of $1,519,000 in a Senate race in New York is insufficient unless they recapture two-thirds of the reduction that was made on yesterday in order that the 100-percent Government subsidy for general election campaigns in New York and other States can be increased.

The 2-cent increase does not sound like a great deal, but it amounts to millions of dollars throughout the entire Nation and, of course, the amount is several hundred thousand dollars in New York.

As the distinguished chairman of the committee stated, this would provide for primary and general elections expenditures for the Senate seat. The 12 cents and the 8-cent figures would provide for a campaign fund in the primary and in the general election.

If there were to be a run-off, it would be another million dollars, but just the primary and general election is $2½ million. So I believe a candidate could struggle along on $2½ million in a campaign. If the Senate thinks it should be increased, of course, it can do so; but I want to stress that what the Senator seeks to do is to reconsider the action of the Senate, which has already been sought to be reconsidered, and the Senate refused to do so. The Senator limits it to President and Senator. As he stated, the House is already 14 cents above, anyhow. So actually there is a full reconsideration of the action of the Senate yesterday and a substitution of another figure which the Senator was at liberty to offer yesterday, had he seen fit so to do.

So I hope that the amendment will be rejected and that we will be able to go on to other matters that the Senate has not yet considered about this bill.

Mr. President, I reserve the remainder of my time.

Mr. JAVITS. Mr. President, I yield myself 1 minute to make a point which I think, is pretty interesting. I thought my friend from Alabama was a real expert on the rules of the Senate although he has served here a lot less than others have. I regret to say I must call this to his attention, that I could not move to reconsider yesterday because I was on the losing side. I thought that 15 cents was right, so I could not move to reconsider. I am not going to reconsider today. I am just saying that we have another chance, before we lock up the bill, to take another look at this, because of the expertise of the committee, and get closer to their figure.

Mr. ALLEN. Mr. President, I did not say that the Senator should have moved to reconsider, because the Senator from Alabama made that motion yesterday. I said that the effect of what the Senator is doing here is to seek to reconsider. That action was sought to be taken yesterday and the Senate refused to reconsider it because it favored it. What the Senator is trying to do now is to do indirectly what the rules forbid him from doing directly, since the motion to reconsider has already been tabled and another motion is not in order.

Several Senators addressed the Chair.

Mr. TOWER. Mr. President, I should like to support the amendment offered by the Senator from New York. To begin with, to place an arbitrary limit on campaign expenditures based on a per capita figure is foolish, because campaign costs vary from State to State.

The Senator of New York can reach a great many of his constituents, perhaps half of them, via the subway. But in my State, to get to the various major population centers, because of population dispersal, I have to lease an aircraft because many cities in Texas are not served by the commercial airlines. Of course, no one is served by trains any more and the bus service is not all that good. So campaign costs vary from State to State.

To place an arbitrary limit on this is stupid and foolish, in my opinion, in the first place, because it takes none of these things into consideration.

The reason we have 50 sovereign States and different ways of exercising the police power in those States, is that situations, people, geography, and everything else, differ from various regions of the country to others.

But if we are going to place an arbitrary limit, let us err on the side of giving too much rather than too little, because it is unfair to many people who are campaigning to be expected to get by with 12 cents a voter. We cannot do it. The figure of 12 cents is unrealistic, as has been pointed out eloquently and ably and precisely by my friend from New York.

So I hope the Senate will follow his urgings, that we raise the limit to 14 cents.

Mr. DOLE. Mr. President, I yield myself 1 minute to ask a question of the distinguished chairman. I think I understand it, but do these limitations—I am addressing my question to the distinguished Senator from Nevada—if one is unopposed or at least one is certain he is unopposed, he does not know it until filing deadline. What happens to the limitation so far as the primary is concerned?

Mr. CANNON. The provisions in the bill limit the amount spent to not more than 10 cents. If a person has no opponent in the primary, that is in addition to the amount permitted in the general.

Mr. DOLE. That is the primary reason I am supporting the Senator from New York. Perhaps some of the one-party States, where we do not have any opponent, we are not worried about it. Perhaps the Senator from Alabama may be

unopposed—he probably is—but it does not make much difference at this point whether it is 10 cents, 12 cents, 30 cents, or whatever. But in a two-party State, where we have a primary and a general election, it makes a great deal of difference.

It makes a great deal of difference whether the opponent may have a primary and you have no primary. He can spend up to the limit in the primary and the general, even though the primary opponent may be a token opponent. Some are getting resourceful and they are talking about setting up a token opponent in a primary in order to bypass certain provisions of the law, which indicates the foolishness of this. So, to set up a strawman in the primary he can spend more money in the primary and get ready for the general election.

As the Senator from Texas has stated, perhaps on this question, where the committee initially recommended 15 cents per voter, the compromise should be at 14 cents because those States are there and everything depends on our own situation from time to time. For instance, in Kansas, which is a small State bordered by the State of Missouri, where television costs are high, we start our campaign early and try to play it straight and we have already spent 4 or 5 cents per voter and we are still far from the general election. We find many other things like that entering into the situation, so that we have been hiring people with contributions that have been coming in to our campaign, and every expense has been registered and every expenditure has been disclosed, but when we do that you soon learn, if you have an opponent, that 14 cents is not unrealistic.

The PRESIDING OFFICER (Mr. NUNN). The question is on agreeing to the amendment of the Senator from New York.

On this question the yeas and nays have been ordered, and the clerk will call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), the Senator from Wyoming (Mr. MCGEE), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Ohio (Mr. METZENBAUM), and the Senator from Mississippi (Mr. STENNIS) are necessarily absent.

Mr. HUGH SCOTT. I announce that the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Michigan (Mr. GRIFFIN), and the Senator from Illinois (Mr. PERCY) are necessarily absent.

I also announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT) is absent on official business.

The result was announced—yeas 37, nays 51, as follows:

[No. 137 Leg.]

YEAS—37

Abourezk	Case	Haskell
Baker	Clark	Hatfield
Bayh	Cranston	Hathaway
Beall	Dole	Huddleston
Biden	Domenici	Hughes
Brock	Dominick	Humphrey
Brooke	Hart	Javits
Buckley	Hartke	Johnston
Kennedy	Pell	Tunney
Mansfield	Schweiker	Williams
Mondale	Scott, Hugh	Young
Pastore	Stevens	
Pearson	Tower	

NAYS—51

Aiken	Ervin	Muskie
Allen	Fannin	Nelson
Bartlett	Gravel	Nunn
Bellmon	Gurney	Packwood
Bennett	Hansen	Proxmire
Bentsen	Helms	Randolph
Bible	Hollings	Ribicoff
Burdick	Hruska	Roth
Byrd, Harry F., Jr.	Jackson	Sparkman
Byrd, Robert C.	Magnuson	Stafford
Cannon	Mathias	Stevenson
Chiles	McClellan	Symington
Cook	McClure	Taft
Cotton	McGovern	Talmadge
Curtis	McIntyre	Thurmond
Eagleton	Metcalf	Weicker
Eastland	Montoya	
	Moss	

NOT VOTING—12

Church	Inouye	Scott, William L.
Fong	Long	Stennis
Fulbright	McGee	
Goldwater	Metzenbaum	
Griffin	Percy	

So Mr. JAVITS' amendment was rejected.

Mr. ALLEN. Mr. President, I move to reconsider the vote by which the amendment was rejected.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield to me?

Mr. CRANSTON. I am delighted to yield.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order.

UNANIMOUS-CONSENT REQUEST

Mr. ROBERT C. BYRD. Mr. President, I take the floor at this time, through the courtesy of the distinguished Senator from California, to inquire as to how many amendments remain to be called up at this time. One, three, five, seven, nine—

Mr. ALLEN. I have two amendments that will require only 5 minutes each.

Mr. ROBERT C. BYRD. Very well. We have 11 amendments remaining.

Mr. President, I have not discussed this request with the leadership on the other side of the aisle nor have I discussed it with anyone on this side of the aisle.

Mr. President, I ask unanimous consent that the time on any remaining amendment be limited to 15 minutes, with 5 minutes to the manager of the bill and 10 minutes to the mover of the amendment.

Mr. PACKWOOD. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Does the Senator have an amendment?

Mr. PACKWOOD. Yes.

Mr. ROBERT C. BYRD. Would the Senator object if an exception were made for his amendment?

Mr. PACKWOOD. Yes, I would.

Mr. ROBERT C. BYRD. Mr. President, would the Senator object if the request were modified to limit the time to 20 minutes on any amendment, to be equally divided?

Mr. PACKWOOD. Let me ask the Senator's intention in terms of attempting to finish tonight or going over until tomorrow.

Mr. ROBERT C. BYRD. Well, it would suit me either way, frankly. I will stay here as long as Senators want to stay or go over until tomorrow. But my thought was that if time could be cut down on amendments, then it might be that we could go until 7 or 7:30 this evening; or we could go over until tomorrow and finish tomorrow—or later tonight—whatever Senators prefer.

Mr. PACKWOOD. If we could reach a unanimous-consent agreement to adjourn tonight at 7:30 and come back tomorrow I would have no objection to the limitation proposed.

Mr. PASTORE. Mr. President, I came to my office this morning at 8 o'clock. I have been busy today with a half dozen conferences, I have gone to every meeting it was my responsibility to attend, and I have been on the floor. Here it is 5:30 and it looks as if these amendments are still coming forth. We have had cloture imposed.

I say there should be a sense of fairness in the Senate. When we get to the hour of 6 o'clock we should quit and come back tomorrow. We have not had notice that we were going to stay tonight. Most of us have family obligations. I think that should be taken into consideration. I think this matter has gotten completely out of hand and the time should come to put a stop to it.

If it becomes necessary to stay late tomorrow night we should have notice so that we can advise our families that we will not be home for dinner tomorrow evening.

We have been considering this bill since the latter part of March. I wonder what will happen to the bill anyway when it goes to the House, and here we are straining ourselves and keeping ourselves from our families, which I think is a great injustice. I hope we can reach an agreement. Now there has been a request for a yea and nay vote.

It takes 20 minutes. I have heard a[illegible] 11 amendments, and then some other Senator came along and put up his fingers. I do not think it was the "V" sign—it was two more amendments. That makes 13. That is 4 hours and 20 minutes alone on rollcalls.

Now, when are we going to go home and when are we going to finish the bill? I say the time has come when we ought to have an agreement to quit at 6:30 tonight and come in tomorrow morning, at 9 o'clock, 8 o'clock, 5 o'clock——

SEVERAL SENATORS. Five o'clock.

Mr. PASTORE. Five o'clock, and finish the bill, but please do not let that dinner get cold tonight.

Mr. HUGH SCOTT. Mr. President, will the Senator yield for an interjection?

Mr. PASTORE. I will yield for anything.

Mr. HUGH SCOTT. Mr. President, if the Senator will yield for an interjection, I would like to note, for the Senator's scheduling table, that I believe there are about 15 Senators who are scheduled to

speak for 15 minutes each tomorrow, and that will chew into the Senators' travel schedule like crazy if we cannot figure out some way to get out of here by 3 o'clock tomorrow. We have about 25 Senators who want to get out of here.

Mr. PASTORE. Mr. President, I would ask unanimous consent at this time that those 15 Senators who have 15-minute speeches begin to talk after passage of this bill and let them stay here until midnight tomorrow night.

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The PRESIDING OFFICER. There will be order in the Senate.

Mr. ROBERT C. BYRD. Mr. President, I will revise my unanimous-consent request in this fashion: That time on any amendment be limited to 20 minutes; that time on any debatable motion or appeal, with the exception of a motion to recommit, which Senator STEVENSON was interested in earlier today, be limited to 10 minutes, to be equally divided; that the time on any motion to recommit be limited to 30 minutes; and that the vote on final passage occur at no later than 3 p.m. tomorrow.

Mr. BUCKLEY. Mr. President, reserving the right to object——

Mr. ROBERT C. BYRD. With this further proviso: that time on any rollcall, with the exception of the first rollcall tomorrow, be limited to 10 minutes, the warning bells to be sounded after the first 2½ minutes.

Mr. BUCKLEY. Mr. President, reserving the right to object, I do have an important constitutional point that I intend to raise, and although I do not believe I would use my full hour, I do not want to give up my full hour.

Mr. ROBERT C. BYRD. Would the Senator wish to speak tonight? I will be happy to remain, and he can make his speech tonight.

Mr. PASTORE. It will be in the RECORD. We will read it.

Mr. BUCKLEY. I would hope to get the ears of more than one or two Senators on that important constitutional question.

Mr. ROBERT C. BYRD. I hope the Senator will make his speech this evening, because Senators are on notice that he is going to make the speech, and before the final vote they would look at the RECORD tomorrow and read it.

Mr. BUCKLEY. With all due respect, I doubt that they will.

Mr. ROBERT C. BYRD. I am afraid that they would not stay to listen at this hour of the day, or even tomorrow, may I say to the Senator. I have been here 16 years and I have not seen anyone capture their attention in that way.

Mr. TOWER. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. TOWER. If the consent agreement is not agreed to, that would mean we could stay here tonight and Senators could bring up their amendments, and have votes on them, unless there were a motion to adjourn, which would be debatable.

Mr. PASTORE. No, there is no debate on such a motion.

Mr. ROBERT C. BYRD. A motion to adjourn is not debatable.

Mr. President, I repeat my request that there be a limitation of 20 minutes——

Mr. PACKWOOD. Mr. President, if the Senator will yield, if we are including in that proposed agreement a vote at 3 o'clock tomorrow, can we have assurances of leaving here at 7 o'clock this evening instead of 10 o'clock?

Mr. PASTORE. I will buy 6:30.

Mr. PACKWOOD. Six-thirty—fine.

Mr. BAYH. Mr. President, reserving the right to object, perhaps this is inappropriate, and I seldom find myself on the opposite of an issue with my distinguished friend from Rhole Island, but, you know, Mr. President, we have been kicking this bill around for a long, long time. Some people have expressed strong reservations about it. I do not deny that every Senator has his parliamentary right to prolong the debate, but I will tell you, Mr. President, the people of Indiana would be glad to let Senators remain here so their suppers will get cold. It would be a pretty good precedent if we stayed here until we finished this bill for campaign reform. We have debated it at length. Two-thirds of the Senate have exercised their will to limit debate on it, and now we ought to be willing to give up our conveniences and work until we finish action on the bill.

Mr. PASTORE. Come, come, come, Mr. BAYH. This is getting to be a little ridiculous. This Senator can sustain any inconvenience that is necessary to do his job. All I am saying is that it has been the custom and the habit of this body that when we are going to stay here beyond 7 o'clock, we receive notice of it the day before.

I do not know the obligations of the Senator from Indiana for his own family, but I have my family waiting for me tonight. When he talks about inconvenience, all I am saying is that we have been here for a month, and we are not going to finish this bill tonight. All I am saying is, let us come in early tomorrow morning and let us get started early and do our job.

Mr. BAYH. Mr. President——

Mr. PASTORE. I do not want to be a tinhorn hero, but I am a little surprised at my colleague from Indiana. He is not more conscious of his responsibility than the Senator from Rhode Island, and when he says we are going to give up our conveniences because this is important, whom are we kidding? [Laughter.]

Mr. ROBERT C. BYRD. Mr. President, may we have order?

The PRESIDING OFFICER. Senators will please take their seats.

Mr. BAYH. Mr. President——

Mr. ROBERT C. BYRD. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Indiana.

Mr. ROBERT C. BYRD. How did the Senator from Indiana get the floor?

The PRESIDING OFFICER. Because he addressed the Chair for the last 5 minutes while the Senator from Rhode Island was speaking.

Mr. ROBERT C. BYRD. Very well.

Mr. BAYH. Mr. President, I hope my friend from Rhode Island will read what I said, and if he can point to anything which, either by direction or indirection, implied or suggested that my friend from Rhode Island was not one of the most dedicated Members of this body, willing to sacrifice his own conveniences, then I will stand corrected. I think he knows of my great respect for him. My statement goes not to any degree of piosity, but it seems to be clear to me that a lot of people are looking for us to stand up and get this thing behind us. I think we have a great opportunity to do so. I am not asking for any merit badges, but I am telling you, Mr. President, a lot of people think this is important. This might give us an opportunity to do something a little exceptional and get it behind us, and what it does to my family is not going to be different from what it does to anybody else's.

Mr. ROBERT C. BYRD. Mr. President, we could argue this point ad infinitum. I would hope we would try to reach an agreement. Let me try again.

I ask unanimous consent that time on any amendment be limited to 15 minutes, with 10 minutes to the mover of such amendment and 5 minutes to the manager of the bill; that time on any debatable motion or appeal be limited to 10 minutes, to be equally divided in accordance with the usual form, with the exception of a motion to recommit, on which the Senator from Illinois (Mr. STEVENSON) wanted 30 minutes today and was assured of that by the majority leader; and that time on any rollcall vote be limited to 10 minutes, with the warning bells to be sounded after the first 2½ minutes; with the time allotted under the cloture rule to be vitiated; with a waiver of paragraph 3 of rule XII; and that the vote on final passage occur at no later than 3 tomorrow afternoon.

Mr. HUGH SCOTT. Mr. President, will the Senator accept an amendment to his request—that the Senator from New York (Mr. BUCKLEY) be recognized first tomorrow at the end of the special orders and be allowed to use not more than 30 minutes of his time at that time and may then proceed on his amendment in the time limited?

Mr. ROBERT C. BYRD. With that modification.

Mr. AIKEN. Mr. President, will the Senator yield for a question?

Mr. ROBERT C. BYRD. Yes.

Mr. AIKEN. I should like to say that for more than a week I have had six amendments to improve this bill very much. But in the interest of bringing consideration of this bill to an early conclusion, I have refrained from offering the amendments. However, if we come in tomorrow, I should like to offer the six amendments. I assume that they will be permitted if we come in tomorrow. If we can finish tonight, I shall be glad to bring this unhealthy situation to an earlier close.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. Mr. President, the purpose of my rising at this time is to ask the Senator from West Virginia, if I fully

understand his remarks. Is the time on these amendments from this point forward to be limited to 15 minutes, 10 minutes for the proponents and 5 minutes for the manager of the bill?

Mr. ROBERT C. BYRD. The time allotted under the cloture rule would be vitiated.

Mr. BAKER. That is what I wanted to bring up. Is the Senator asking that the cloture vote be vitiated?

Mr. ROBERT C. BYRD. No. I would ask only that the time limitation under the cloture rule be vitiated, because otherwise the 15 minute agreement on any amendment would be worthless.

Mr. BAKER. Do I understand that we are going to run for any very great length of time tonight?

Mr. ROBERT C. BYRD. No, I did not say that. I would have to leave that up to the Senate.

Mr. BAKER. I am perfectly agreeable to any time limitation. I was wondering what the leadership had in mind.

Mr. ROBERT C. BYRD. With the number of amendments that have been adopted, and with the number of Senators who want to speak tomorrow morning, it would be necessary to go for a while yet tonight.

Mr. BAKER. Well, would the Senator say 7 or 7:30?

Mr. ROBERT C. BYRD. Yes, in order to finish tomorrow at 3 o'clock, but even then, Senators may be shut off from debate on their amendments at 3 p.m.

Mr. BAKER. My final concern is with reference to the statement by my friend from Rhode Island (Mr. PASTORE), that we would receive notice the day before if we were going to run beyond 7 o'clock. If that is so, I should like to be put on that list.

Mr. ROBERT C. BYRD. I know of no such list.

Mr. PASTORE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that time on any amendment be limited, to instead of 30 minutes, to 20 minutes, the time to be equally divided.

The PRESIDING OFFICER. Is there objection?

Mr. DOMINICK. Mr. President, reserving the right to object—and this is a point I wanted to make before—the Senator from West Virginia indicated to the Senator from Tennessee that this vitiated the 1-hour cloture rule.

Mr. ROBERT C. BYRD. Only if we were able to get unanimous consent to the package agreement earlier proposed.

Mr. DOMINICK. I happen to be one of those who do not have amendments, but I may want to talk on an amendment or talk on the bill, and I would hate to give up my hour without any agreement.

Mr. ROBERT C. BYRD. Without an agreement, the Senator will not lose his right.

Mr. DOMINICK. That is correct. Without an agreement, I would not be losing my right. But if we got a unanimous-consent agreement, I would, as I understand.

Mr. ROBERT C. BYRD. But the request I now propose is only with respect to time on amendments.

Mr. DOMINICK. But objection has already been made to that.

Mr. ROBERT C. BYRD. But I am now proposing a different consent request.

Mr. AIKEN. If the Senator believes that we can postpone completing this work tonight and come in tomorrow, would it be possible to complete the bill and get a final vote on it before the adjournment for Easter?

Mr. ROBERT C. BYRD. Yes, I think so. The idea, in trying to get a definite time limitation, is to accommodate Senators who wish to make plane reservations to go afar. Some of them want to get away by 3 o'clock p.m. tomorrow.

Mr. AIKEN. I would be willing to agree to a time limitation for tonight. If we are to come in tomorrow, we might just as well strike this proposal.

Mr. ROBERT C. BYRD. I will be glad to try again.

Mr. President, I ask unanimous consent that time on any amendment be limited to 15 minutes, 10 minutes to the proposer of the amendment and 5 minutes to the manager of the bill, with time on any amendment to an amendment, motion, or appeal limited to 10 minutes, to be divided in accordance with the usual form, with section 3 of rule XII being waived, with time under the cloture rule being vitiated, and that the vote on final passage of the bill occur at no later than 10 o'clock tonight.

The PRESIDING OFFICER. Is there objection?

Mr. PACKWOOD and several other Senators objected.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I will make a final effort. I renew my request that time on any amendment be limited to 15 minutes, to be divided 10 minutes to the mover of the amendment and 5 minutes to the manager of the bill, with 10 minutes on any rollcall votes for the remainder of the bill; and that the warning bells be sounded after 2½ minutes. I shall make no further request.

Mr. PASTORE. Mr. President, how long will we be going tonight?

Mr. ROBERT C. BYRD. I am not going to attempt to answer that question. When Senators are ready to quit, I shall be glad to move to adjourn. As long as Senators want to stay, I will stay.

Mr. PASTORE. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROBERT C. BYRD. Mr. President, I ask that the time that has been utilized be charged to me under the rule and that no time be charged to the able Senator from California (Mr. CRANSTON).

Mr. METCALF. Mr. President, under section 3 of rule XII, to whom is the debate that is taking place being charged?

The PRESIDING OFFICER. It has been assigned to the Senator from West Virginia.

Mr. ALLEN. Mr. President, I yield myself 1 minute. I have used only 1 minute, so the parliamentarian has advised me; and I certainly do not intend to use the whole hour.

I believe there is only one way out of the situation, and that is to move to table the bill. I move that the bill be laid on the table, and I call for the yeas and nays.

Mr. ROBERT C. BYRD. Mr. President, the Senator from California had the floor before yielding to me.

The PRESIDING OFFICER. Does the Senator from California yield for the purpose of allowing the Senator from Alabama to make his motion?

Mr. CRANSTON. No, I do not.

Mr. ALLEN. I thought the Chair had recognized the Senator from Alabama.

The PRESIDING OFFICER. The Senator from California has the floor. The Senator from California yielded to the Senator from West Virginia for a unanimous-consent request.

AMENDMENT NO. 1177

Mr. CRANSTON. Mr. President, I call up my amendment No. 1177 and ask that it be stated.

Mr. HUGH SCOTT. Mr. President, my congratulations to the Senator from California.

Mr. CRANSTON. I thank the Senator from Pennsylvania.

Mr. President, this is mainly a technical amendment.

Mr. STEVENS. Mr. President, will the Senator yield for a question?

Mr. CRANSTON. I yield.

Mr. STEVENS. Mr. President, as I understand, there is no time limitation.

The PRESIDING OFFICER. There is an existing agreement of a half-hour on each amendment.

Mr. STEVENS. I thank the Chair.

The PRESIDING OFFICER. This is superimposed on the 1 hour that each Senator has under the cloture rule.

The amendment will be stated.

The legislative clerk read as follows:

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On page 5, line 19, following the word "office", insert the words ", and if, in a State which registers voters by party, that said party's registration in such State or district is equal to 15 per centum or more of the total voter registration in said State or district".

Mr. CRANSTON. Mr. President, this is largely a technical amendment which will, I believe, improve on the committee's intent in section 501(8) of S. 3044. As written, the bill provides that if only one political party qualifies as a major party entitled to full funding, a political party whose candidate received in the last election less than 25 percent of the total votes cast in that election but more than 15 percent would qualify as a major party. I believe that that provision was included because of concern expressed by several Senators, including myself, that occasionally in a two-party State an incumbent may be sufficiently popular as to receive more than 75 percent of the vote in a given election.

I support section 501(8) of the bill, but I wish to suggest that it be modified to take into account the following situation which has arisen this year in California.

There are five incumbent Democratic Congressmen who are facing no Republican opponents this fall. However, in two of these districts there are candidates

seeking the nomination of the Peace and Freedom Party and of the American Independent Party. It therefore appears likely that on the November ballot these two Democratic Congressmen will find themselves opposed by nominees of these minor parties. It is entirely possible that Republicans or Democrats wishing to vote against the Democratic incumbent for whatever reason would vote for a minor party candidate. Thus, a minor party candidate will become the recipient of such protest votes and could conceivably receive 15 percent of the total vote cast. As a result in the 1976 election, under the provision of the bill as it is before us, either of the minor parties might be entitled to receive full funding as a major party. The fact is that in neither district does either party have as much as 1 percent of the total voter registration in the district.

Therefore, Mr. President, I would like to suggest that in addition to receiving 15 percent of the votes cast in the previous election, a party, in order to qualify as a major party, should also have voters in the district equal to at least 15 percent of the total registered voters.

That is what my amendment would do. It adds the language:

and if, in a State which registers voters by party, that said party's registration in such State or district is equal to 15 percent or more of the total voter registration in said State or district.

This would prevent the unjust enrichment of the political coffers of minor parties who have no basis for being treated as major parties.

Mr. CANNON. Mr. President, I yield myself 20 seconds. The eloquence of the Senator from California has convinced me of the merits of his amendment, and I am prepared to accept it. I yield back the remainder of my time.

Mr. CRANSTON. I yield back the remainder of my time.

The PRESIDING OFFICER. All remaining time having been yielded back, the question is on agreeing to the amendment (No. 1177) of the Senator from California.

The amendment was agreed to.

Mr. JOHNSTON. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. CRANSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 1125

Mr. CRANSTON. Mr. President, I call up my Amendment No. 1125, and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. CRANSTON'S amendment (No. 1125) is as follows:

On page 15, line 18, strike the words "primary or".

On page 15, line 20, strike the words "primary or".

On page 15, line 21, strike the words "(a) or".

Mr. CRANSTON. Mr. President, this amendment, incidentally, is cosponsored by the Senator from Kansas (Mr. DOLE).

As presently written, S. 3044 provides that a candidate unopposed in a primary or general election can spend only 10 percent of what he would be able to spend if he had opposition. I have no objection to this restricted spending limit for a candidate unopposed in a general election. The primary, however, is a totally different matter.

Let me give two examples of what might happen if the bill is enacted in its present form:

The most likely situation would involve an incumbent unopposed in his own primary, while two—or more—individuals seek the nomination of the other party. The two challengers might well decide that the best way to win their party's nomination is to campaign against the incumbent—with each challenger ignoring the other. Thus the incumbent would be subject for a period of several weeks or months to a campaign against him by two opponents, both of whom would be permitted to outspend him 10 to 1.

A second example involves a primary election where the incumbent has nominal opposition and the person seeking the nomination of the other major party is unopposed. The incumbent would ignore the opponent within his own party and campaign on his record for a period of weeks or months during which time he would be able to outspend his real challenger in the other party by 10 to 1.

Both situations are obviously inequitable and unfair.

Let me point out the situation which I face this year, and what might happen under a public financing system with this limitation on primary spending.

As it happens, I have two virtually unknown opponents in my own Democratic primary in June. Neither man is conducting a visible campaign, to the best of my knowledge. It is for all practical purposes, then, that I am unopposed, and it could well have been that neither man filed and thus I would have been actually unopposed.

There are four highly visible, active candidates seeking the Republican nomination for the U.S. Senate. All four are raising money and all four have to be classed as serious candidates for the Republican nomination.

As the bill is written, these four candidates would be entitled to spend $4½ million campaigning against me during a period of at least 4 months, while I would be able to spend only a hundred thousand dollars defending myself against their attacks. Now it is true, under the bill the situation would be equalized under the general, with each candidate able to spend the same amount. But the huge disadvantage of being outspent better than 40 to 1 in the primary might well create an insurmountable disadvantage from which a candidate could not recover.

There has been some suggestion that the 10-percent figure might be changed, allowing an unopposed candidate in a primary to spend 20 percent. At 20 percent, I would be able to spend only 5 percent of what my opponents could spend. At 50 percent I would be able to spend only 12½ percent of what my opponents could spend.

Even if my amendment is accepted, with four opponents all of whom may be conducting their primary campaigns by running against me, I would be outspent 4 to 1. But at least no one candidate would be able to spend more than I would be permitted to spend.

There is an additional disadvantage for an unopposed candidate of such a limitation in the primary. Much of the groundwork for the general election must be laid in the primary. The candidate's campaign organization must be put together, for if the candidate waits until the general election, he will find that both staff and workers have been preempted by other candidates and campaigns. He must travel, he must speak, he must make public appearances—even though he may decide not to put on a substantial media campaign. All of these activities cost money.

Finally, he may wish to begin his direct mailing solicitation of small contributions during the primary—the cost of which, in a State like California, could quickly eat up the total amount a candidate would be allowed to spend.

I suspect—and this is another very serious objection, I believe, to the present language of the bill—that it the bill is enacted in its present form, no candidate of either party would ever allow himself to be unchallenged. This could lead to nonserious candidates put up by serious candidates of either party—or by the parties themselves—to assure that the serious candidate receives full funding. Such a situation would be unhealthy, unwise, and might well lead to a greater need for Federal funding than would be the case if an unopposed primary candidate were allowed to spend as much as an opposed primary candidate—and if he chose to. Under a matching system, I doubt that an unopposed primary candidate would, under normal circumstances, raise or spend as much as a candidate with opposition.

My amendment, No. 1125, would simply strike any reference to the primary from section 504(c) of the bill. I urge Senators to support the amendment.

I am delighted to yield to my distinguished cosponsor of the amendment, the Senator from Kansas (Mr. DOLE), on his time.

Mr. DOLE. I will use my time, but I would like to ask the Senator a question.

Mr. COOK. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. COOK. What does the Senator mean, on his time?

Mr. DOLE. I have 48 minutes left, or 43.

Mr. COOK. Well, there are 30 minutes on an amendment. Is the Senator utilizing time on the amendment, or on his hour?

Mr. DOLE. Both.

Mr. COOK. All right. That makes sense.

Mr. DOLE. As I understand it, the Senator from California would strike section 504(c)?

Mr. CRANSTON. We would strike the

provision that makes it impossible to spend more than 10 per cent in a primary.

Mr. DOLE. All right. As a cosponsor of the amendment, I should know what it does, but I wanted to make certain.

I agree with the Senator from California. As discussed with him earlier, I believe the present provisions will lead to the serious primary candidate having a non-serious primary opponent, if he is faced with a tough general election to permit him to spend a greater total amount.

We are going to see more and more efforts to evade or avoid the law if this restriction remains. I support the amendment and am pleased to cosponsor it with the Senator from California.

I also raise the question, How do we know when we are going to be opposed in a primary? In Kansas, the filing deadline is June 20. I started campaigning a year ago. In the process, I have spent a great deal of money—for a small State like Kansas—making preparations for a primary, if I have one, and if not, then for the general election.

I may yet have a primary because we have several months before June 20. Seems to me this is one of the restrictions in the bill which makes the entire proposition at least appear to be unworkable. I have made expenditures based on the supposition that I could have a primary. If unopposed then I can only spend 10 percent and the rest must be charged, I guess, against what I might have spent in the general election. This is not fair so I believe the amendment would be helpful.

Mr. CRANSTON. I think the Senator from Kansas very much.

Mr. CANNON. Mr. President, I think the Senator from Kansas has made a very good point about the fact that a person may be campaigning long before he finds out that they are not going to have a primary and he might well have spent more than the 10-percent limit we have in the bill. It is a valid point and I am willing to accept the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from California.

The amendment was agreed to.

Mr. BUCKLEY. Mr. President, during the course of the past 2 weeks we have examined and debated many facets of S. 3044. Many of us have questioned specific provisions of the legislation on conceptual and practical grounds. We have questioned the effect such legislation might have on our two-party system, on challengers seeking to unseat incumbent officeholders and on the faith of the American people in their elected leaders.

In addition, several Senators have questioned the wisdom of spending millions of tax dollars to pay for political campaigns. Others have introduced amendments designed to tamper with the mechanics of the legislation; to raise this limit or lower that spending ceiling.

I have supported many of these amendments and I have joined in raising practical and theoretical questions concerning the wisdom of this approach to campaign reform. The voting on the various amendments we have considered convinces me that there is a majority in this body willing to go along with S. 3044 regardless of the consequences.

It is clear that the pressure for reform is enough to force many Senators to go along with a proposal that might easily create more problems than it will ever solve. The argument has been cast in a way that allows those in favor of S. 3044 to appear as heroes in the press while those of us who oppose it are made to look like the villians of the piece.

In fact, however, the legislation under discussion is far too important and far too complicated to be decided on the basis of slogan and lobbyist pressure. We have an obligation to look at the facts, to analyze the specifics of the legislation before us and at least to guess at the consequences that might follow its passage.

That, in my view, is what those who question the wisdom of the bill have been trying to do for some time now.

It would be unfortunate if we were to move to a vote on this legislation without a thorough discussion of the constitutional implications of some of its provisions. As I indicated when I introduced my amendment No. 1140, I hoped thereby to stimulate a discussion of these implications.

Briefly, my amendment would eliminate the expenditure ceilings imposed by section 504 of S. 3044 on Federal candidates, retaining them only as ceilings on the maximum amount of Federal money a candidate might receive. Thus while every major candidate would be assured of adequate funds to wage a campaign, there would be no overall ceiling on campaign expenditures on behalf of a given candidate.

I have introduced the amendment in this form because most constitutional experts who have analyzed campaign reform proposals of the kind we are debating today have concluded that limits on total expenditures raise the most serious constitutional questions. It is their belief that such limits are necessarily violative of the first amendment and would be found unconstitutional if a proper case were brought before the Supreme Court.[1]

In a moment, I will analyze the reasoning that leads so many scholars to this conclusion. At this point, however, I would simply like to note that some who are supporting overall limits today were not at all sure of their constitutionality when we were debating the 1971 Federal Election Campaign Act.

The senior Senator from Massachusetts (Mr. KENNEDY), for example, who now seems so certain that S. 3044 deserves our support, evidently felt at the time of our earlier debate of this issue that a limit on total expenditures would raise grave constitutional questions.

He said at that time that a ceiling on total expenditures "is a step that cannot be justified except under the most stringent circumstances, in accord with the standard of 'clear and present danger', established long ago by the Supreme Court as the test by which denials of free speech under the first amendment must be measured. To me, no ceiling on total campaign spending in present circumstances can meet this test." [2]

As we get into the discussion on this question I hope the Senator from Massachusetts and others who like to consider themselves civil libertarians will try to square their views on the first amendment with their support of this legislation. It is my feeling that try as they might they will not be able to do so because I am convinced that S. 3044 directly infringes on the freedom of speech and association guaranteed to all Americans by that amendment.

I realize that there has been popular pressure for reform in the wake of Watergate and believe that most of those who are supporting S. 3044 are doing so because they want to respond to the perceived need for some sort of reform, and because they have not really though about the constitutional questions that troubled the Senator from Massachusetts only 3 years ago.

But good intentions are not enough; good intentions alone will neither guarantee good laws nor protect the laws we do pass from a stringent, critical examination by the courts. This is especially true when we pass legislation that limits freedom of speech—and that is exactly what we are going to be doing if we pass S. 3044 as presently written.

Thus, as Prof. Martin Redish pointed out in a New York University Law Review article:

> To argue that campaign spending limitations . . . may violate the First Amendments is in no way to contend that the problems with which these measures deal are not serious difficulties, nor, for that matter, that they would be ineffective in solving them. But the courts have felt compelled to invalidate laws intended to foster legitimate societal interests because of their conflict with the First Amendment in many situations.[3]

Redish's point is, of course, precisely the point that I have made: The fact that S. 3044 was drawn up by well-meaning men to solve a problem they perceived as important will not get it past a court interested in defending the right of free speech as defined by the first amendment.

Thus in 1971, with the best of intentions, we passed the Federal Election Campaign Act, portions of which have already been struck down as unconstitutional by a three-judge panel here in the District of Columbia.

Just last fall, Judge Bazelon ruled for the panel that title I of that act is unconstitutional. In the case of ACLU against Jennings, the Court avoided a general decision on spending limits per se, but did conclude that our attempt to close spending loopholes violated free speech guarantees.

And in an amicus brief, filed in that case, the New York Times described our work as "shot through with constitutional deficiencies" and "patently inconsistent with basic first amendment freedoms." If we do not examine the constitutional problems inherent in the legislation now before us we are liable to

Footnotes at end of article.

have our handiwork described in even harsher terms by higher courts in the future.

It is at least possible that the limited discussion of the constitutional problems inherent in this bill is a direct result of Common Cause's attempts to assure would-be supporters of the legislation that it does not present a constitutional problem. To this end, Common Cause's lobbyists have circulated a legal memorandum that discounts the constitutional questions. I have referred this memorandum to Prof. Ralph Winter of the Yale Law School, for his analysis.

Based on what Professor Winter tells me, the Common Cause memorandum may be charitably described as slovenly, professionally incompetent, and in its use or misuse of citations, grossly misleading. I ask unanimous consent to have printed at the conclusion of my remarks his analysis of some of the more obvious flaws in this memorandum.

The PRESIDING OFFICER (Mr. McINTYRE). Without objection, it is so ordered.

(See exhibit 1.)

Mr. BUCKLEY. Mr. President, we should realize that in spite of Mr. Gardner's assurances to the contrary, constitutional experts feel spending limits do raise serious and probably fatal constitutional questions. Thus, a number of constitutional scholars have argued that the first amendment has as a primary objective the encouraging of the dissemination of information to voters so as to aid them in the performance of their electoral functions.[4]

The Supreme Court gave voice to this aspect of the first amendment in New York Times against Sullivan.[5] In that decision the Court gave firm support to the view that self-government requires that the public be able to be exposed to a full range of opinion about matters of public concern. The case itself did not involve an election, but it did involve an elected official about whom allegedly libelous statements had been published. The Court held that the first amendment precluded an award of damages in the absence of a showing of "actual malice." The Court's reluctance to countenance actions that might limit the public's right of access to political information was also a deciding factor in Mills against Alabama,[6] a case involving a law passed for admirable purposes by well-meaning men.

The Mills case impresses me as interesting in that it dealt with an Alabama law prohibiting the solicitation of votes on election day. The legislature enacted the law as a campaign reform measure to prevent emotional or slanted last-minute appeals to which an opposition candidate could not reply. The case arose when the publisher of the Birmingham Post-Herald was convicted of running an editorial on election day that urged voters to vote in a certain way.

In overturning the publisher's conviction, Mr. Justice Black wrote:

Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the discussion of governmental affairs. This, of course, includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to the political processes.[7]

In commenting on the Mills decision, Professor Redish observes that:

Once it is recognized that a significant purpose of the First Amednment is to insure that the public will be provided with information necessary to the performance of its self-governing function, it follows that information disseminated in the course of an election campaign must rank high in terms of First Amendment values.[8]

A thorough reading of these cases demonstrates rather clearly that the Court views with suspicion any regulations or laws having the effect of reducing the total amount of discourse or discussion on public questions. If this is so, it is difficult to see how the Court could uphold spending limitations of the kind included in S. 3044.

Still, those who support spending limits and have considered the constitutional problems seem to believe that the power and, indeed, the duty of the Congress to regulate Federal elections must be balanced against first amendment considerations and that in such a balance considerations of free speech must give way to the perceived need for such limits to guarantee a "clean" electoral system.

No one denies that Congress has the right to regulate Federal elections, but this does not automatically mean that laws designed to accomplish this will not be struck down if in conflict with the first amendment.

The problem has been summarized clearly in a 1972 article by the editors of the Columbia Journal of Law and Social Problems:

Any limit on a candidate's right to purchase the use of communications media limits his ability to speak effectively to his fellow citizens, and may limit their right to be informed of his identity and positions on political issues.[9]

It goes without saying that the same reasoning applies with equal or even greater force to any citizen not a candidate who is prevented from publishing his views of a candidate by virtue of limitations on spending.

The question then is whether the restrictions on free speech contemplated by the authors of this legislation can be justified constitutionally. Though the majority of the Court has generally rejected what might be termed the absolutist view of the first amendment championed by the late Justice Black, it has nevertheless been extremely reluctant to allow laws that limit freedom of speech to stand.

Thus, as the Court stated in Konigsberg against State Bar in 1961, valid restrictions on freedom of speech must fall within one of two categories:

On the one hand, certain forms of speech, or speech in certain contexts, have been considered outside the scope of constitutional protection . . . On the other hand, general regulatory statutes, not intended to control the content of speech, but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First . . . Amendment forbade Congress . . . to pass, when they have been found justified by subordinating valid government interests, a prerequisite to constitutionality which has necessarily involved a weighing of the government interest involved.[10]

The first category here includes cases involving advocacy of overthrow of the government, obscenity, and other cases where the speech itself is offensive to the public safety or to morals. I do not know of anyone who seriously contends that campaign rhetoric resulting from present spending levels falls within this category.

The second category includes a number of cases involving situations in which the government while in pursuit of some legitimate goal, restricts or curtails freedom of speech as a means of achieving that goal. To validate a law in this category the Court conducts a sort of "balancing test" of the kind alluded to in the Konigsberg language I quoted a moment ago.

Some experts, such as Profs. Ralph Winter and Alexander Bickel, also of the Yale Law School, take the position that the balancing test would be inapplicable in a case involving expenditure limitations. As Winter has testified before the Senate Commerce Committee:

There is no countervailing interest . . . to "balance" against a campaign restriction on speech inasmuch as the restriction is imposed not to preserve some other legitimate interest of society but solely for the sake of restricting the speech itself . . .[11]

Thus, Professor Winter would find himself in agreement with Mr. Justice Black's opinion in Barenblatt against United States:

There are, of course, cases suggesting that a law which primarily regulates conduct but which might also indirectly affect speech can be upheld if the effect on speech is minor in relation to the need for control of the conduct. With these cases I agree . . . But (they did not) even remotely suggest that a law directly aimed at curtailing speech and political persuasion could be saved through a balancing process.[12]

The question then is whether a limit on political spending is, in fact, a law "directly aimed at curtailing speech."

Winter's position on the question seems most in line with recent constitutional thought, though I recognize that some would disagree. The Senator from Iowa (Mr. CLARK) quoted Prof. Archibald Cox on the floor of the Senate a few days ago to the effect that limitations on spending are not really limitations on speech because they are limitations "once removed."[13]

I have great respect for Professor Cox and for his opinions, but I am afraid this contention strikes me as a bit far-fetched.

Prof. Joel Fleishman of Duke University considered this question in a 1971 study of campaign reform legislation that is worth reading and quoting:

It is exceedingly unlikely that the Court would create a new category of unprotected speech particularly for political speech and association, since it has been continually shrinking the vitality of the pre-existing categories of obscenity, libel, "fighting words" and "speech plus". With the possible exception of the last, those categories would

See footnotes at end of speech.

indeed be strange bedfellows for an activity that the Court has called "the essence of self-government" and to argue that the presence of money converts political speech into "speech plus" would . . . deny protection entirely to most forms of political campaigning.[14]

Mr. Justice Douglas would no doubt agree with Professor Winter and have trouble with Professor Cox's reasoning if he still stands by what he wrote in United States against United Auto Workers some years ago:

The making of a political speech up to now has always been one of the preferred rights protected by the First Amendment. It usually costs money to communicate an idea to a large audience. But no one would seriously contend that the expenditure of money to print a newspaper deprives the publisher of freedom of the press. Nor can the fact that it costs money to make a speech—whether it be hiring a hall or purchasing time on the air—make the speech any the less an exercise of First Amendment rights.[15]

Thus, Mr. Justice Douglas, like Professor Fleishman and Professor Winter, would be forced to class a limit on expenditures with a limit on speech. By so classifying it, he would also be forced to rule it an unconstitutional infringement of a vital freedom.

To sum up this point, let me return again to Professor Winter:

A limit on what a candidate may spend is a limit on his political speech as well as on the political speech of those who can no longer effectively contribute money to his campaign. In all the debate surrounding the First Amendment, one point is agreed upon by everyone: no matter what else the rights of free speech and association do, they protect explicit political activity. But limitations on campaign spending and contributing expressly set a maximum on the political activity in which persons may engage . . . The First Amendment prohibits the setting of a legal maximum on the political activity in which an individual may engage. This is the case whether or not the maximum is imposed in the name of equalizing or whether an actual discriminatory effect can be shown. Even under a "balancing" test, such regulation is invalid because there is no countervailing interest (for example, preserving public peace) to "balance" against the restriction on speech.[16]

But even if we assume for the sake of argument that Professor Cox and his friends at Common Cause could convince a court that spending limits are indirect or incidental as opposed to direct limits on political speech, it is still not at all clear that a court would find them constitutional.

Mr. Justice Rutledge described the burden supporters of laws incidentally affecting the publicizing of citizens' views must bear in the 1948 Supreme Court case of United States against Congress of Industrial Organizations:

The loss inherent in restrictions upon expenditures for publicizing views . . . forces upon its authors the burden of justifying the contraction by demonstrating in dubitable public advantage arising from the restriction outweighing all disadvantages, thus reversing the direction of presumptive weight in other cases.[17]

This is a difficult test and a heavy burden; a test and a burden, I submit, that the limits in this bill cannot pass and its authors are not able to bear.

The supporters of limits of the kind included in S. 3044 evidently believe they can meet this test by arguing that only by imposing such limits can we purify our electoral process. By turning the concept of free speech on its head, they are forced to argue that the imposition of restrictions will have the effect of expanding rather than contracting First Amendment rights.

Mr. President, I find this second argument novel and worthy of examination. But first I must point out that many experts disagree with the first argument.

Indeed, after an examination of the evidence, the majority of those who have written on campaign reform in general have rejected spending limitations as unwise, unneeded and probably unconstitutional. Given this fact, the authors and supporters of S. 3044 will undoubtedly have an extremely difficult time demonstrating the "indubitable public advantage" the courts would be looking for as evidence that such a law should be sustained.

But let me return now to the argument that by limiting speech we would be expanding it. This argument was summarized in the 1972 issue of Harvard Civil Rights—Civil Liberties Law Review which argued that a limitation would prevent "either side from flooding the media with a single point of view . . . (and) prevent one candidate from destroying, by sheer volume rather than by reason, the effectiveness of informational advertising presented by opposing candidates."[18]

This is an interesting view, but one that Professor Flieshman notes—

Assumes that someone—presumably Congress—knows how much information is the right amount and reflects a basic distrust in the capacity of individual citizens to discount the greater volume of political advertising in reaching their decisions.[19]

Professor Redish also rejects this rather novel argument saying that while:

It is generally argued that a wealthy candidate should not be permitted to "buy an election" with his finances and that legislated limits on campaign spending are therefore necessary. The reasoning implicit in this argument seems to be that, when one candidate's financial resources are limited, the only equitable solution is to require the wealthier candidate to reduce his spending to a level approximating that of his opponent. In other words, if a portion of the voting public is to be generally unfamiliar with one candidate's view and records because of his financial inability to become well known, it is only fair that the public be almost as uninformed about the other candidate. Such reasoning presents at the very least a prima facie conflict with the first amendment policy of encouraging as much communication in the political realm as possible.[20]

I state that if my amendment is adopted we will retain Federal financing at the stipulated levels, thereby assuring all candidates of adequate money with which to bring their own platforms into the view of the public without venturing into the unconstitutional realm of stating that no more than legislative limits may be spent

I have to agree with Redish, Winter, and Fleishman on these points. It seems to me beyond question that spending limitations of the kind under consideration are in violation of the first amendment.

I recognize that the Supreme Court has never faced a case involving these limitations, but in analagous cases a majority has always followed a line of reasoning that if applied to expenditures limitations would force a finding of unconstitutionality.

Let us not forget that portions of the 1971 act have already been declared unconstitutional and that we have an affirmative obligation to square our actions with the dictates of the Founding Fathers. There is no way we can do that and still support S. 3044 as written.

Before I conclude, I would like to return to the statement by the Senator from Massachusetts (Mr. KENNEDY) 3 years ago. I have read the memorandum Common Cause has prepared supporting the constitutionality of spending limits and I have read as much of the literature on the subject as time has permitted.

The fact that strikes me is that to argue in support of the constitutionality of these limits requires one to accept a theory of the first amendment that civil libertarians have uniformly rejected as antithetical to the concept of free speech in a democratic society.[21]

I only hope that those who, like the Senator from Massachusetts, have reversed field and have either accepted the argument that such limits on political discourse can be justified or are ignoring the question, realize that they are promoting a view of the Constitution that might prove dangerous to the very concept of a free society.

It is a view that I, for one, cannot accept and I, therefore, urge the adoption of this amendment.

Mr. President, I ask unanimous consent to have printed in the RECORD the footnotes referred to in my prepared text.

There being no objection, the footnotes were ordered to be printed in the RECORD, as follows:

FOOTNOTES

[1] See A. Rosenthal, *Federal Regulation of Campaign Finance: Some Constitutional Questions* (Princeton, N.J.: Citizens' Research Foundation (ed.), 1972); H. Alexander, *Money in Politics*, (Washington, D.C. Public Affairs Press, 1972); A. Rosenthal, *Campaign Financing and the Constitution* (Cambridge, Mass., 8 Harvard Journal on Legislation 359, 1972); J. Fleishman, *Freedom of Speech and Equality of Political Opportunity: The Constitutionality of the Federal Election Campaign Act of 1971* (51 North Carolina Law Review 389, 1973); M. H. Redish, *Campaign Spending Laws and the First Amendment* (46 N.Y. University Law Review 900, 1971); H. R. Penniman and R. Winter, *Campaign Finances: Two Views of the Political and Constitutional Implications*, (American Enterprise Institute, Washington, D.C. 1971); Ralph Winter, *Campaign Financing and Political Freedom*, (American Enterprise Institute, Washington, D.C., 1973); T. Emerson, *The System of Freedom of Expression*, 1970.

[2] Press release of Senator Kennedy cited in 8 Harvard Journal on Legislation 640, 665 (1971).

[3] Redish, *supra*, at 903.

[4] See especially Redish, *supra*, at 900 and Fleishman, *supra*, generally.

[5] 376 U.S. 254 (1964).

[6] 384 U.S. 214 (1966).

[7] 384 U.S. at 218–19.

[8] Redish, *supra*, at 910.

[9] *Campaign Spending Controls Under the*

Federal Election Campaign Act of 1971, 8 Columbia Journal of Law and Social Problems 285, 299 (1972).

[10] 366 U.S. 36, 50–1, (1961).

[11] From Winter's testimony before the Subcommittee on Communications, Senate Comm. on Commerce Hearings on S. 382, 92nd. Congress, 1st Secs. 576 (1971).

[12] 360 U.S. 109, 141–42 (1959) (dissenting opinion).

[13] Congressional Record for April 5, 1974 at S. 5338.

[14] Fleishman, *supra*, at 441.

[15] 352 U.S. 567, 544 (1957).

[16] Winter, *supra, Money, Politics and the First Amendment*, in *Campaign Finances* 45, 60.

[17] U.S. v. C10, 355 U.S. 106, 140–45 (1948).

[18] 7 Harvard Civil Rights, Civ. Lib. L. Review 351 at 228 (1972).

[19] Fleishman, *supra*, at 455.

[20] Redish, *supra*, at 912.

[21] Emerson, *supra*.

EXHIBIT 1

MEMORANDUM ON THE CONSTITUTIONALITY OF S. 3044 AND DEFECTS IN THE COMMON CAUSE MEMORANDUM ON THE SUBJECT

This memorandum is in response to your inquiry concerning the legal memorandum submitted by Mr. John Gardner of Common Cause during Senate hearings on campaign reform last fall. I am familiar with that memorandum, and in my judgment it misrepresents the state of present case law by misstating the important of revelant Supreme Court decisions and by relying on precedents which most scholars agree have lost their vitality. This analysis is not as detailed and specific as I would like because such an analysis will require more time to prepare, but I do herein attempt to point out some weaknesses in the Common Cause argument.

Ironically the Common Cause memorandum relies on a number of decisions that have long been the target of much criticism from many of those who now vigorously support S. 3044. Common Cause's position incorporates what can only be described as a horse and buggy view of the first Amendment.

The Common Cause memorandum makes several arguments to which I shall respond seriatem.

I. CAMPAIGN SPENDING IS AN ASPECT OF FREEDOM OF SPEECH AND RESTRICTIONS THEREON RAISE CONSTITUTIONAL PROBLEMS

Common Cause argues that Campaign Financing is more action than speech and is more regulatable by Congress. According to the memorandum, private Campaign Financing should be viewed as essentially analogous to picketing and demonstrations. Even if this is the case, however, the power of Congress to impose restrictions must be very, very limited, for it is quite clear from relevant Supreme Court decisions that peaceful picketing and demonstrations which merely advocate certain ideas of public interest are not subject to governmental restriction. If Common Cause is in fact right in the argument it makes, then presumably Congress could pass a law restricting the number of demonstrators that could come to Washington on behalf of a cause. If the law, as the quotation from Professor Freund suggests, restricts the protection to acts of verbal communication, only then Congress might declare that being a part of a large peaceful demonstration is not protected by the First Amendment.

Common Cause also argues that private Campaign Financing is "all too often only an attenuated form of bribery: the donation of money is likely to communicate to the candidate the information that the donor seeks either a direct *quid pro quo* . . . or, more usually, an indirect form of influence, such as access or consultation". This sweeping charge alleges too much; for all kinds of political activity create an indistinguishably analagous situation. For example, Common Cause's willingness to spend large amounts of money to purchase advertising attacking Congressmen who disagree with the group's views creates precisely the same indirect form of "influence" and also guarantee Mr. Gardner's lobbyists access to those Congressmen who fear Common Cause's well-financed wrath.

One may also question whether Common Cause is willing to make such a sweeping statement when directed at Congressmen and Senators with whom it is in sympathy rather than with whom it disagrees. The logic of Common Cause's statement strongly suggests, for example, that Chairman Rodino is unable to exercise independent judgment during the present impeachment inquiry because of the large contributions he receives from organized labor which strongly and vigorously supports impeachment of the President. Such implications should be rejected.

In the event that the Common Cause assertions are true, it is truly a case of overkill to call for a widespread attack on private financing rather than more precise legislation aimed at bribery.

Private campaign financing does, contrary to Common Cause assertions, perform valuable functions in the political process and must be viewed as an aspect of political freedom.

"All political activities make claims on society's resources. Speeches, advertisements, broadcasts, canvassing, volunteer work—all consume resources. Money is the medium of exchange by which individuals employ resources owned by others. If political activities are left to private financing, individuals are free to choose which activities to engage in, on behalf of which causes, or whether to do so at all. When the individual is deprived of this choice, either because government limits or prohibits his using money for political purposes or takes his money in taxes and subsidizes the political activities it chooses, his freedom is impaired.

Money is fungible with other resources suitable for political use and, distributional questions apart, the individual who contributes a resource directly, for example, time and labor, is in many ways indistinguishable from the individual who contributes money which in turn purchases time and labor. Money, it must be conceded, though, is the most "fungible" resource.

Campaign contributions, therefore, perform honorable and important functions. The contribution of money allows citizens to participate in the political process. Persons without much free time have few alternatives to monetary contributions other than inaction.

Campaign contributions are also vehicles of expression for donors seeking to persuade other citizens on public issues. Contributing to a candidate permits individuals to pool resources and voice their message far more effectively than if each spoke singly. This is critically important because it permits citizens to join a potent organization and propagate their views *beyond their voting districts*. Persons who feel strongly about appointments to the Supreme Court, for example, can demonstrate their convictions by contributing to the campaigns of sympathetic senators.

Nor is there anything inherently wrong with contributing to candidates who agree with one's views on social an economic policies, even where those policies may benefit the donor. Obviously, groups pursue their self-interests and seek support from others. *This is a salient characteristic of a free political system*. Those who seek to regulate that kind of contribution can stand with those who would deny the vote to welfare recipients to prevent that vote from being "bought" by promises of higher benefits. So long as we accept the bestowal of economic favor as a proper function of government, potential recipients will tend to exchange this support for such favors.

Contributions of this sort may represent broad interests that might otherwise be underrepresented. Suppose land developers mount a campaign against proposals to restrict the use of large undeveloped areas. Certainly they represent their own economic interests, but they also functionally represent potential purchasers, an "interested" group that would otherwise go unnoticed since few persons would consider themselves future purchasers at the critical moment.

These functions of campaign contributions are often ignored because critics of the present system mistake cause and effect. A senator may support union causes because he receives large union contributions but in fact it may be more likely that he receives contributions because he supports the causes.

Contributions also serve as a barometer of the intensity of voter feeling. In a majoritarian system, voters who feel exceptionally strongly about particular issues may be unable to reflect their feelings adequately in periodic votes. As members of the anti-war movement often pointed out, the strength of their feelings as well as their numbers should have been taken into account. If a substantial group feels intensely about an issue, a system which does not allow that feeling to be heard effectively may well be endangered. Campaign contributions are perhaps the most important, and least offensive, means by which the intensity of feeling can be expressed. People who feel strongly about United States support for Israel, for example, are able to voice that conviction with greater effect through carefully directed campaign donations than in periodic elections in which the stance of the available candidates does not permit a clear signal to be given.

This function might be discounted if large contributions reflected only intense but idiosyncratic views. For the most part, however, intense feelings will not generate substantial funds unless large numbers of citizens without great wealth also share those convictions. Campaign contributors in these circumstances serve as representatives or surrogates for the entire group. That Mr. X, who favors free trade, can make larger contributions than Mr. Y, who does not, really matters little, if Mr. Z agrees with Mr. Y and gives heavily.

Candidates seeking change, moreover, may have far greater need for, and make better use of, campaign money than those with established images or those defending the existing system. Money is, after all, subject to the law of diminishing returns and thus generally of less use to the well-known politician than to the newcomer. The existence of "seed money" may be an important agent of change.

The challenge to the arguments that private campaign financing enlarges political freedom and contributes stability to the system is essentially distributional: because money is maldistributed throughout the society, its use in political campaigns undesirably skews the political process by allowing wealthy individuals too much power. As noted present evidence does not demonstrate that monetary support is available only for certain ideas. Quite the contrary, it strongly suggests that a wide array of causes and movements on the right and left can attract money. Still, individuals can increase their personal political power through contributions, and even if they functionally represent like-thinking but poorer people, it might be

argued that wealth nevertheless is skewing the process.

This argument rests on the assumption that by reducing the personal political power of the large contributor, political influence will be spread more evenly through the society. Such an assumption seems almost surely wrong, for limitations on the use of money may aggravate rather than diminish any distortion. Direct access to the resources most useful for political purposes may be even more unevenly distributed than wealth.

For example, restrictions on private campaign financing may well enhance the power of those who control the media, particularly if public subsidies are modest in size and thus increase candidate dependence on the goodwill of the media. Limitations on the use of money must also increase the relative power of individuals with large amounts of free time and the ability to attract public attention. Finally, groups with the ability to take their money "underground" and operate independent "issue" (rather than "political") campaigns will have their power increased. It has been reported, for example, that unions favor a ban on contributions because their own power would be relatively increased as a result of the host of "indirect contributions" they can provide.

What emerges is the likelihood that restrictions on private campaign financing will not increase the political power of the people generally but will further concentrate it in already powerful segments of the community. Ironically, the increment will largely fall to various sectors of the well-to-do, because direct access to resources useful for political purposes (free time, control of the media, ability to operate "issue" campaigns) is concentrated not in the poor but in the wealthy. Private campaign financing in short may in fact be a means of spreading political power and expanding the range of discourse.

The call for regulation of campaign financing can be extended to other kinds of resources and could easily become a call for substantial limitations on political freedom. The allegations about the influence of money reflect a basic and disturbing mistrust of the people.

If campaign financing really "distorts" legislative or executive behavior, candidates can raise its effect as an issue and the voters can respond at election time. The call for legislation must be based on the belief that the voters cannot be relied upon to perceive their own best interests. If one really believes the people are this easily fooled and in need of this protection, however, there may be no end to the campaign tactics eligible for regulation and no end to calls for increases in the power of those "protecting" the public.

II. LIMITATIONS ON PURCHASES OF POLITICAL ADVERTISING ARE UNCONSTITUTIONAL

Common Cause argues that it is permissible for Congress to place a limitation of $1,000 on any individual or committee expenditure on behalf of a candidate. It is ironic that the limit supported is a fraction of what Common Cause has spent on newspaper advertising attacking Congressman Hays for opposing this very kind of legislation under S. 3044. No one individual or committee would be able even to purchase a full page ad in the New York Times stating its views on the election of a particular candidate under the terms of S. 3044. That calls for such legislation come from organizations which have been wielding such financial power in purchasing advertising is both ironic and instructive.

The Supreme Court has held explicitly that paid advertising which comments on matters of public interest is protected by the First Amendment. This was the explicit holding in the *New York Times v. Sullivan*. Two other decisions of the Court made clear that such advertising doesn't lose constitutional protection because the advertisers are seeking "action on laws in the hope that they may bring about an advantage to themselves and a disadvantage to their competitors . . . to disqualify people from seeking a public position in matters which they are financially interested would itself deprive the government of a valuable source of information and . . . deprive the people of their right to petition in the very instances in which that right might be of the most important to them". *Eastern Rail Road Presidents conference* V. *Noerr Motor Freight*, 365 U.S. 126, 127 (1961).

Common Cause attempts to escape the conclusions in these cases by distinguishing between organizations which address themselves to public issues and do not endorse or support candidates and organizations which do endorse candidates. The distinction, however, is totally irrational. Consider Common Cause's own advertisements referring to representative Hays. The legal distinction Common Cause would make discriminates between that kind of advertisement and the very same advertisement which concludes by advising Hays' constituents to vote against him.

Common Cause would add to the advertisements now prohibited by statute communications by an organization to its members. But why should one's statements to members be covered, while one's statements to one's neighbors are not, simply because they appear in the form of a newspaper advertisement.

Beyond that, what Common Cause suggests creates a huge loophole in the act. All special interest organizations need do now is use their money to purchase advertising supporting candidates on the issues but stopping short of explicit endorsement. Indeed, the statute for that reason probably increases the power of special interests over the electoral process and thereby further limits the influence of the individual citizen.

Finally, the distinction Common Cause makes is not explicitly set out in S. 3044. Indeed, it is not at all clear from the language of that statute whether Common Cause's advertisement about Representative Hays would not in fact be prohibited if made during an election campaign.

III. S. 3044 IS NOT SAVED FROM CONSTITUTIONAL CHALLENGE ON THE GROUNDS THAT IT PRESERVES THE INTEGRITY OF THE ELECTORAL PROCESS

Common Cause argues in its memorandum that ceilings on campaign contributions and expenditures are constitutional because they are designed to preserve the integrity of the electoral process. This claim is an example of the group's gross misrepresentation of the effect this legislation might have. Limitations on expenditures necessarily assist incumbent officeholders. This is particularly true when the incumbent is setting the level. The incumbent has the advantage of being well-known as well as the in kind benefits the Government provides such as offices, a staff, access to mailing privileges, access to media facilities, etc. All of these can be turned to political advantage and give incumbents an advantage that can be overcome only if a challenger can raise and spend an amount of money sufficient to off-set it. S. 3044 includes extremely low limits and is therefore essentially an incumbent's bill. For example, the average spent by challengers who unseated incumbents in House races in 1972 amounted to $125,000. No limit even suggested in the Congress approaches that figure. If the legislation passes no challenger will be able to spend close to that amount.

The idea proposed by Common Cause that "this is an area in which the Court should properly refer to the expertise of Congress . . . might be considered ludicrous were it not so seriously made. The expertise of incumbents is in maintaining their incumbency. Any legislation and particularly legislation which can be turned to the advantage of incumbency so easily should be scrutinized with the greatest of care.

IV. S. 3044 CANNOT BE JUSTIFIED ON THE GROUNDS THAT IT EFFECTUATES FIRST AMENDMENT RIGHTS OF LESS AFFLUENT CITIZENS

Common Cause has argued that legislation such as S. 3044 is justified on the grounds that it protects first amendment rights of less affluent citizens by:

(1) "protecting the ability of even poor candidates to run for office,

(2) by preventing the drowning out of other political viewpoints by the best financed voices,

(3) by assuring the equality of the voting rights of the less affluent citizens by limiting the influence on candidates of affluent contributions."

Even if these goals might justify the severe restrictions included in S. 3044, there is no basis to believe the legislation will effectuate them. Quite the contrary, it is likely to be counter-productive in that respect.

Candidates and causes which begin without substantial sums have traditionally relied on large contributors or patrons. What they need has been called by some "seed money"—and is likely to come only from a small number of large contributors. S. 3044 does not give money to candidates that do not already have substantial support.

There is no reason, moreover, to anticipate that less affluent persons would be better off under S. 3044. As I have already indicated above, the greater advantage of the wealthy is the free time they can devote to politics as well as their ability to get into the public eye through "non-political" activities. S. 3044 maximizes rather than minimizing many of the advantages of the relatively more affluent.

For many of the same reasons S. 3044 will not prevent the "drowning out of contrary viewpoints or insure the equality of voting rights of less affluent citizens." S. 3044 will not spread political power throughout the society. What it will do is give an advantage to those with direct access to resources which are easily put to political purposes. Those with free time (students and the wealthy), those who control the media (the wealthy), and those organizations which can run "issue" campaigns (wealthy organizations) will all have their power increased. The poor and the powerless will be helped not at all.

The whole point of the exercise now going on in Congress is not the cleansing of the political process but the skewing of it. Those in power are seeking to maximize that power instead a number of special interest groups which attempt to wield influence to the use of money in forms of money other than campaign contributions are seeking to increase their power.

Mr. BUCKLEY. Mr. President, I call up my amendment No. 1140.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

The amendment is as follows:

On page 6, beginning with "that—" on line 20, strike out through "contributions" on line 24, and insert in lieu thereof "that no contributions".

On page 7, line 15, strike out "spend" and insert in lieu thereof "receive".

On page 10, lines 19 and 20, strike out "the amount of expenditures the candidate may make" and insert in lieu thereof "the maximum amount of payments the candidate may receive".

On page 13, beginning with the comma on line 9, strike out through line 14 and insert in lieu thereof "exceeds the maximum amount of payments he may receive in con-

nection with that campaign under section 504.".

On page 13, line 15, strike out "EXPENDITURE" and insert in lieu thereof "PAYMENT".

On page 13, line 17, strike out "(f)" and insert in lieu thereof "(d)".

On page 13, beginning with "who" on line 19, strike out through line 21 and insert in lieu thereof "may receive payments under section 506 in connection with his primary election campaign in excess of".

On page 13, line 24, strike out "(g)" and insert in lieu thereof "(e)".

On page 14, line 9, strike out "(A)".

On page 14, line 10, strike out "make expenditures in any" and insert in lieu thereof "receive payments under section 506 in connection with his campaign in any".

On page 14, line 17, strike out "expend in that State" and insert in lieu thereof "receive under section 506".

On page 14, beginning with line 19, strike out through line 3 on page 15.

On page 49, lines 16 and 17, strike out "616, and 617" and insert in lieu thereof "and 616".

On page 49, line 23, strike out "616, or 617" and insert in lieu thereof "or 616".

On page 71, lines 13 and 14, strike out "AND EXPENDITURES".

On page 71, beginning with line 19, strike out through line 17 on page 75.

On page 75, line 18, strike out "615." and insert in lieu thereof "614.".

On page 77, line 9, strike out "616." and insert in lieu thereof "615.".

On page 77, line 17, strike out "617." and insert in lieu thereof "616.".

On page 78, line 19, strike out "616, and 617" and insert in lieu thereof "and 616".

On page 78, in the matter below line 22, strike out the item relating to section 614 and redesignate the items relating to sections 615, 616, and 617 as 614, 615, and 616, respectively.

On page 15, line 5, strike out "(f)" and insert in lieu thereof "(d)".

On page 15, beginning with "who" on line 5, strike out through line 8 and insert in lieu thereof "may receive payments under section 506 in connection with his general election campaign in excess of the greater of—".

On page 15, line 10, strike out "(g)" and insert in lieu thereof "(e)".

On page 15, line 19, strike out "make expenditures" and insert in lieu thereof "receive payments".

On page 15, beginning with line 22, strike out through line 3 on page 17.

On page 17, line 4, strike out "(f)" and insert in lieu thereof "(d)".

On page 17, line 21, strike out "(g)" and insert in lieu thereof "(e)".

On page 18, line 4, strike out "(h)" and insert in lieu thereof "(f)".

On page 18, lines 6 and 7, strike out "expenditure" and insert in lieu thereof "payment".

On page 18, line 10, strike out "(h)" and insert in lieu thereof "(g)".

On page 48, lines 18 and 19, strike out "616, and 617" and insert in lieu thereof "and 616".

The PRESIDING OFFICER. Who yields time?

Mr. BUCKLEY. Mr. President, I yield myself such time as I may require.

Mr. President, are we under a time limitation?

The PRESIDING OFFICER. There are 15 minutes on each side. The Senator has 15 minutes plus the time remaining from his 1 hour.

Mr. BUCKLEY. Mr. President, I call up the amendment and ask unanimous consent that the reading of the amendment be dispensed with. It reads like gobbledygook, but its effect is to remove the ceiling on overall expenditures. In other words, all those portions of the bill that would place a total limit on campaign expenditures would be excised. As I explained earlier, however, it would preserve the Federal financing aspects of the bill.

Mr. President, I would also like to send to the desk a modification of my amendment and ask unanimous consent that it be accepted.

The PRESIDING OFFICER. Without objection, the modification is made.

The modification is as follows:

On page 4 of the amendment, after line 20, insert the following:

On page 65, between lines 6 and 7, insert the following:

EXPEDITIOUS REVIEW OF CONSTITUTIONAL QUESTIONS

SEC. 214. Title IV of the Federal Election Campaign Act of 1971 is amended by adding at the end thereof the following new section:

JUDICIAL REVIEW

"SEC. 407. (a) The Federal Election Commission, the national committee of any political party, and individuals eligible to vote for President are authorized to institute such actions, including actions for declaratory judgment or injunctive relief, as may be appropriate to implement or construe any provision of this Act or of Chapter 29 of title 18, Unite dStates Code. The district court shall immediately certify all questions of constitutionality of this Act to the United States court of appeals for that circuit, which shall hear the matter sititng en banc.

"(b) Notwithstanding any other provision of law or rule any decision on a matter certified under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States. Such appeal must be brought within 20 days of the court of appeals decision.

"(c) It shall be the duty of the court of appeals and of the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any question certified under subsection (a)."

Mr. BUCKLEY. Mr. President, it is a modification that I am sure will prove acceptable to the managers of the bill. It merely provides for the expeditious review of the constitutional questions I have raised. I am sure we will all agree that if, in fact, there is a serious question as to the constitutionality of this legislation, it is in the interest of everyone to have the question determined by the Supreme Court at the earliest possible time.

Mr. President, I ask for a division and that the various provisions of my original amendment be considered en bloc.

The PRESIDING OFFICER. Is there objection? There is none, and it is agreed to.

Mr. BUCKLEY. Mr. President, I suggest the absence of a quorum.

Mr. DOMINICK. Mr. President, will the Senator withhold that request and yield to me?

Mr. BUCKLEY. I yield.

Mr. DOMINICK. Mr. President, I want to congratulate the Senator on what was a very forceful, thoughtful, and erudite speech. I was not so erudite, but I got on my feet and said, first, that we were being masochistic and we were being unconstitutional and we were dealing with public funds that I thought was a travesty on the taxpayers; but the Senator brought up a number of cases, over and beyond the three-judge-court case that I referred to, which has already ruled, in effect, that a limitation on expenditures is unconstitutional. This is in connection with S. 372.

So I congratulate the distinguished Senator. I suspect he is not going to win on a vote, but I think this may be very good history for the country and for the courts in determining what we are voting for when this bill finally goes down.

Mr. BUCKLEY. I thank the Senator from Colorado. I think that the constitutional aspects of the legislation before us have been almost totally ignored by the press, the Congress, and in most of the discussions we have seen in columns and editorials. Yet, the importance of protecting the first amendment in all its aspects, especially in its political aspects, is so essential to a free society that I urge this body not to be swept into enacting legislation that we will all live to regret; legislation that will most assuredly be found to be unconstitutional once its key provisions are tested.

It is for these reasons that I have offered my amendment. I understand it may be an exercise in futility; yet I think the effort must be made.

Mr. NUNN. Mr. President, will the Senator yield for a question?

Mr. BUCKLEY. I yield.

Mr. NUNN. I understand the Senator's constitutional question, and I think he has performed a real service in bringing it out in clear fashion. I would like to ask, however, what his amendment does.

Mr. BUCKLEY. Its effect is to eliminate limitations on total expenditures by or on behalf of a candidate. It does not affect the public financing aspects of this bill. It assures that, within the limitations set, all candidates for Federal office will be provided with public campaign funds. My intent is as I indicated in my formal remarks to raise the important constitutional questions that I feel should be answered before we vote on final passage.

Mr. NUNN. But it would eliminate the overall limitation on what a candidate could spend in a campaign?

Mr. BUCKLEY. Yes, and on what may be contributed, though not on the limits on what an individual could legally contribute.

Mr. NUNN. It simply affects what a candidate could spend.

Mr. BUCKLEY. Yes.

Mr. NUNN. Does it affect the subceilings on advertising and media expenses?

Mr. BUCKLEY. No, my concern is with the problems raised by a ceiling on total spending.

Mr. NUNN. I thank the Senator.

The PRESIDING OFFICER. Who yields time?

Mr. ALLEN. Mr. President, I yield myself 1 minute.

I certainly would like to support the amendment of the distinguished Senator from New York, but without taking a position on that or having a vote on it, I would like to direct a motion to the bill as a whole, and if that fails, then the Senator's amendment would still be in order.

Mr. President, I move that the bill and pending amendment be now laid on the table, and I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion of the Senator from Alabama. The yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), the Senator from Wyoming (Mr. MCGEE), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Ohio (Mr. METZENBAUM), and the Senator from Mississippi (Mr. STENNIS), are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Illinois (Mr. PERCY), and the Senator from North Dakota (Mr. YOUNG), are necessarily absent.

I also announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT), is absent on official business.

The result was announced—yeas 31, nays 57, as follows:

[No. 138 Leg.]

YEAS—31

Aiken	Curtis	Hruska
Allen	Dole	Johnston
Baker	Dominick	McClellan
Bartlett	Eastland	McClure
Bellmon	Ervin	Nunn
Bennett	Fannin	Roth
Brock	Griffin	Talmadge
Buckley	Gurney	Thurmond
Byrd, Harry F., Jr.	Hansen	Tower
Cotton	Helms	Weicker
	Hollings	

NAYS—57

Abourezk	Hartke	Muskie
Bayh	Haskell	Nelson
Beall	Hatfield	Packwood
Bentsen	Hathaway	Pastore
Bible	Huddleston	Pearson
Biden	Hughes	Pell
Brooke	Humphrey	Proxmire
Burdick	Jackson	Randolph
Byrd, Robert C.	Javits	Ribicoff
Cannon	Kennedy	Schweiker
Case	Magnuson	Scott, Hugh
Chiles	Mansfield	Sparkman
Clark	Mathias	Stafford
Cook	McGovern	Stevens
Cranston	McIntyre	Stevenson
Domenici	Metcalf	Symington
Eagleton	Mondale	Taft
Gravel	Montoya	Tunney
Hart	Moss	Williams

NOT VOTING—12

Church	Long	Scott, William L.
Fong	McGee	Stennis
Fulbright	Metzenbaum	Young
Goldwater	Percy	
Inouye		

So the motion to table the bill (S. 3044) was rejected.

Mr. MANSFIELD. Mr. President, will the Senator from New York yield briefly to me?

Mr. BUCKLEY. I yield to the majority leader.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that on the pending amendment, which I understand is divided into two parts—and I understand that if need be he intends to ask for a rollcall vote on both—there be a limitation of 10 minutes. This meets with the distinguished Senator's approval and that of the leadership and the managers of the bill on each of the two parts, if there is a rollcall, the time to be equally divided between the Senator from New York (Mr. BUCKLEY) and the manager of the bill, the Senator from Nevada (Mr. CANNON), and that the votes on each, if any, be limited to 10 minutes. That would include, may I say, before the final judgment is made, a motion to table as well.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from New York is recognized.

Mr. BUCKLEY. Mr. President, as the distinguished majority leader has stated, my amendment is divided into two parts. I shall ask for the yeas and nays on the first part.

The PRESIDING OFFICER. The Senate will be in order. The Senator will suspend until order is restored.

The Senator may proceed.

Mr. CANNON. Mr. President, will the Senator yield to me on my time?

Mr. BUCKLEY. Gladly.

Mr. CANNON. Mr. President, the second part of the division of the amendment of the Senator from New York relating to judicial review is acceptable to me, and I would like to propose, if he wishes me to, that I would accept that part of the division. That is, as I understand, agreeable to the Senator.

Mr. BUCKLEY. Mr. President, I am delighted. I had hoped that the managers would accept it.

Mr. CANNON. The Senator will, then, ask for the yeas and nays on the first part?

Mr. BUCKLEY. Therefore, I ask for the yeas and nays only on the first part.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. MCINTYRE). The question is on agreeing to the second part of the amendment of the Senator from New York.

The amendment was agreed to.

The PRESIDING OFFICER. The Senator from New York may proceed.

Mr. BUCKLEY. Mr. President, I reserve the remainder of my time.

Mr. CANNON. Mr. President, I yield myself 2 minutes on the amendment.

The PRESIDING OFFICER. The Senate will be in order.

The Senator from Nevada may proceed.

Mr. CANNON. For the benefit of my colleagues who were not here during the discussion, the distinguished Senator from New York raised the constitutional question as to a limitation on contributions and expenditures. Basically, that is what this amendment does: It just removes all limitations on contributions and expenditures. Accordingly, I am opposed to the amendment, and I hope it will be defeated.

Mr. President, I reserve the remainder of my time.

Mr. BUCKLEY. Mr. President, I just want to clarify one point. My amendment does not affect limits on individual contributions. The limitations written in the bill remain. What my amendment does do is lift the ceilings on total expenditures.

In other words, as I understand it, at a certain time the total contributions received by a candidate reach the statutory limit now written into this bill, and then no one can come along and choose to express his support of that candidate by contributing additional money to him.

In my remarks, I cited the opinion of any number of constitutional lawyers to the effect that such a limitation is clearly violative of first amendment freedom of speech and association.

Mr. President, if the distinguished Senator from Nevada has yielded back his time, I yield back the remainder of mine.

The PRESIDING OFFICER. All remaining time has been yielded back.

Mr. PASTORE. Mr. President, I move to lay the amendment on the table.

Mr. COOK. I ask for the yeas and nays.

The yeas and nays were ordered.

The PRESIDING OFFICER (Mr. MCINTYRE). The question is on agreeing to the motion of the Senator from Rhode Island (Mr. PASTORE) to lay on the table part 1 of the amendment of the Senator from New York (Mr. BUCKLEY). On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Idaho (Mr. CHURCH), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Hawaii (Mr. INOUYE), the Senator from Louisiana (Mr. LONG), the Senator from Wyoming (Mr. MCGEE), the Senator from Ohio (Mr. METZENBAUM), the Senator from Rhode Island (Mr. PELL), and the Senator from Mississippi (Mr. STENNIS), are necessarily absent.

Mr. GRIFFIN. I announce that the Senator from Utah (Mr. BENNETT), the Senator from Hawaii (Mr. FONG), the Senator from Arizona (Mr. GOLDWATER), the Senator from Maryland (Mr. MATHIAS), the Senator from Illinois (Mr. PERCY), and the Senator from North Dakota (Mr. YOUNG), are necessarily absent.

I also announce that the Senator from Virginia (Mr. WILLIAM L. SCOTT), is absent on official business.

The result was announced—yeas 64, nays 21, as follows:

[No. 139 Leg.]

YEAS—64

Abourezk	Eastland	Moss
Allen	Ervin	Muskie
Baker	Gravel	Nelson
Bartlett	Hart	Nunn
Bayh	Hartke	Pastore
Beall	Haskell	Pearson
Bellmon	Hatfield	Proxmire
Bentsen	Hathaway	Randolph
Bible	Hollings	Ribicoff
Biden	Huddleston	Schweiker
Brooke	Hughes	Scott, Hugh
Burdick	Humphrey	Sparkman
Byrd, Harry F., Jr.	Jackson	Stafford
Byrd, Robert C.	Javits	Stevens
Cannon	Johnston	Stevenson
Case	Kennedy	Symington
Chiles	Magnuson	Taft
Clark	Mansfield	Talmadge
Cranston	McGovern	Tunney
Dole	McIntyre	Weicker
Eagleton	Mondale	Williams
	Montoya	

NAYS—21

Aiken	Dominick	McClellan
Brock	Fannin	McClure
Buckley	Griffin	Metcalf
Cook	Gurney	Packwood
Cotton	Hansen	Roth
Curtis	Helms	Thurmond
Domenici	Hruska	Tower

NOT VOTING—15

Bennett	Long	Scott,
Church	Mathias	William L.
Fong	McGee	Stennis
Fulbright	Metzenbaum	Young
Goldwater	Pell	
Inouye	Percy	

So Mr. PASTORE's motion to lay the first part of Mr. BUCKLEY's amendment on the table was agreed to.

Mr. MANSFIELD. Mr. President, the Senate is quite tired. It has been a long day. It has been a hard day. We will have another long day tomorrow, I am afraid.

It is my understanding that the distinguished assistant majority leader, the Senator from West Virginia (Mr. ROBERT C. BYRD), has already gotten permission for the Senate to come in at 9:30 a.m. tomorrow.

It is my further understanding that a number of Senators have special orders for the purpose of conducting two colloquies.

It is anticipated that sometime around 12 o'clock or shortly thereafter, the next amendment, whichever it may be, will be pending. I would hope that some Member of the Senate who is going to offer an amendment will lay it before the Senate so that it will be the pending business at the conclusion of morning business.

Mr. TOWER. Mr. President, if the Senator will yield, I would be delighted to call up my amendment now.

Mr. MANSFIELD. Offer it right now.

AMENDMENT NO. 1153

Mr. TOWER. Mr. President, I call up my amendment No. 1153 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

TITLE VI—REVIEW OF MEMBERS OF CONGRESS INCOME TAX RETURNS

On or before July 1 of each and every year year hereafter, the Joint Committee on Internal Revenue Taxation shall obtain from the Internal Revenue Service all returns of income filed by each Member of Congress for the five previous years. Upon receipt of such returns, the committee staff shall submit such income returns to an intensive inspection and audit for the purpose of determining the correctness with respect to the Member's tax liability.

Upon completion of its inspection and audit, the Joint Committee on Internal Revenue Taxation shall prepare and file a report of the results of its inspection and audit with the committee chairman who shall thereupon forward a copy to the Member concerned and to the appropriate officer of the Internal Revenue Service for such further action with respect to such return as the Internal Revenue Service shall deem proper.

Mr. MANSFIELD. Mr. President, will the Senator from Texas be here sometime shortly after 12 o'clock tomorrow to begin debate on his amendment?

Mr. TOWER. I will be glad to come in, as the Senator from Rhode Island (Mr. PASTORE) has already suggested, at 5 o'clock in the morning. (Laughter.)

Mr. MANSFIELD. We have special orders.

Mr. TOWER. Mr. President, I ask for the yeas and nays on my amendment.

The yeas and nays were ordered.

Mr. MANSFIELD. Mr. President, will the Senator from Texas consider a reduction of the time on his amendment from 30 to 20 minutes?

Mr. TOWER. Mr. President, perhaps it could be dispensed within 15 minutes, if I may have 10 minutes and the manager of the bill 5. [Laughter.]

Mr. MANSFIELD. The manager of the bill says that will be fine with him. So, Mr. President, I ask unanimous consent that there be a time limitation on the Tower amendment now pending of 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, there will be no further votes tonight. This will conclude the consideration of the pending business at the moment.

Mr. TOWER. Mr. President, is there something which precludes me from speaking for 5 minutes tonight?

Mr. MANSFIELD. Well, we wanted to start it tomorrow. Too many Senators are tired right now.

Mr. President, I ask unanimous consent that Calendar No. 744, S. 3231, a bill to provide indemnity payments to poultry and egg producers and processors be limited to not to exceed 1 hour when it is called up tomorrow.

The PRESIDING OFFICER. The Chair would inquire, does that time include the bill and the amendments?

Mr. MANSFIELD. There are no amendments, I understand. Not to exceed 1 hour on the bill.

The PRESIDING OFFICER. The Chair is informed that there are three amendments at the desk.

Mr. MANSFIELD. All right. Within that, I ask unanimous consent that there be 10 minutes on each amendment, to be equally divided and controlled between the manager of the bill and the sponsor of the amendment.

Mr. GRIFFIN. Mr. President, reserving the right to object—assuming that the amendments are germane to the bill?

Mr. MANSFIELD. They have to be germane to the bill.

Mr. GRIFFIN. I thank the Senator.

Mr. JAVITS. Mr. President, I am a cosponsor of one of the amendments. How much time was allocated to the amendment, 10 minutes?

Mr. MANSFIELD. 10 minutes.

Mr. JAVITS. That is only 5 minutes to a side. Will you give us 10 minutes on the amendment we are interested in?

Mr. MANSFIELD. Not to exceed—well, the one that Senator JAVITS is interested in, let that time limitation be 20 minutes, with 10 minutes to a side.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MANSFIELD. Mr. President, now there are some nominations which were reported from the Foreign Relations Committee today unanimously, relative to appointments in the United Nations.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider those nominations, which were reported earlier today.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNITED NATIONS

The second assistant legislative clerk read the names of the following persons to be Representatives of the United States of America to the Sixth Special Session of the General Assembly of the United Nations:

John A. Scali, of the District of Columbia.

William E. Schaufele, Jr., of Ohio.

John H. Buchanan, Jr., U.S. Representative from the State of Alabama.

Robert N. C. Nix, U.S. Representative from the State of Pennsylvania.

Clarence Clyde Ferguson, Jr., of New Jersey.

Barbara M. White, of Massachusetts, to be the Alternate Representative of the United States of America to the Sixth Special Session of the General Assembly of the United Nations.

The PRESIDING OFFICER. Without objection, the nominations are considered and confirmed.

Mr. MANSFIELD. Mr. President, may I ask the clerk whether there are any further nominations reported by the Committee on Foreign Relations today?

The PRESIDING OFFICER. There are no other nominations.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be notified of the confirmation of the nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

There being no objection, the Senate resumed the consideration of legislative business.

CALENDAR CALL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 750, Senate Concurrent Resolution 81, and Calendar No. 752, S. 3304.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMERICANS MISSING IN SOUTHEAST ASIA

The Senate proceeded to consider the concurrent resolution (S. Con. Res. 81) relating to unaccounted-for personnel captured, killed, or missing during the Indochina conflict, which had been reported from the Committee on Foreign Relations with amendments.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that it be in order at this time that the technical amendments be considered en bloc and approved.

The amendments were agreed to.

The concurrent resolution (S. Con. Res. 81), as amended, was agreed to.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. GRIFFIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The preamble was agreed to.

The concurrent resolution, as amended, with its preamble, reads as follows:

Whereas the Agreement on Ending the War and Restoring Peace in Vietnam, signed in Paris on January 27, 1973, and the joint communique of the parties signatory to such agreement, signed in Paris on June 13, 1973, provide that such parties shall—

(1) repatriate all captured military and civilian personnel,

(2) assist each other in obtaining information regarding missing personnel and the location of the burial sites of deceased personnel,

(3) facilitate the exhumation and repatriation of the remains of deceased personnel,

(4) take such other steps as may be necessary to determine the fate of personnel still considered to be missing in action; and

Whereas the Government of the Democratic Republic of Vietnam and the Provisional Revolutionary Government of Vietnam have failed to comply with the obligations and objectives of the agreement and joint communique, especially the provisions concerning an accounting of the missing in action; and

Whereas the Lao Patriotic Front has failed to supply information regarding captured and missing personnel or the burial sites of personnel killed in action, as provided in the Laos agreement of February 21, 1973, and the protocol of September 14, 1973; and

Whereas it has not been possible to obtain information from the various Cambodian authorities opposed to the Government of the Khmer Republic concerning Americans and international journalists missing in that country: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that new efforts should be made by the Government of the United States through appropriate diplomatic and international channels to persuade the Government of the Democratic Republic of Vietnam, the Provisional Revolutionary Government of Vietnam, and the Lao Patriotic Front to comply with their obligations with respect to personnel captured or killed during the Vietnam conflict and with respect to personnel still in a missing status; that every effort should be made to obtain the cooperation of the various parties to the conflict in Cambodia in providing information with respect to personnel missing in Cambodia; and that further efforts should be made to obtain necessary cooperation for search teams to inspect crash sites and other locations where personnel may have been lost.

SEC. 2. The Government of the United States should use every effort to bring about such reciprocal actions by the parties to the peace agreements, including the Government of the Republic of Vietnam and the Royal Lao Government, as will be most likely to bring an end to the abhorrent conduct of the Government of the Democratic Republic of Vietnam, the Provisional Revolutionary Government of Vietnam, and the Lao Patriotic Front regarding the missing in action.

SEC. 3. The Congress declares its support and sympathy for the families and loved ones of the Americans missing in action, who have suffered such deep human anguish for so long due to the undisclosed fate of the missing in action.

SEC. 4. Upon agreement to this resolution by both Houses of the Congress, the Secretary of the Senate shall transmit a copy of such resolution to the President of the United States.

INDEMNIFICATION FOR LOSS OR DAMAGE TO ARCHEOLOGICAL FINDS OF PEOPLE'S REPUBLIC OF CHINA

The bill (S. 3304) to authorize the Secretary of State or such officer as he may designate to conclude an agreement with the People's Republic of China for indemnification for any loss or damage to objects in the "Exhibition of the Archeological Finds of the People's Republic of China", while in the possession of the Government of the United States was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of State or such officer as he may designate is authorized to conclude an agreement with the Government of the People's Republic of China for indemnification of such Government, in accordance with the terms of the agreement, for any loss or damage suffered by objects in the exhibition of the archeological finds of the People's Republic of China from the time such objects are handed over in Toronto, Canada, to a representative of the Government of the United States to the time they are handed over in Peking, China, to a representative of the Government of the People's Republic of China.

Mr. MANSFIELD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GRIFFIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

QUORUM CALL

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PERMISSION FOR SENATOR BARTLETT TO APPEAR AS A WITNESS

Mr. GRIFFIN. Mr. President, on behalf of the minority leader, the Senator from Pennsylvania (Mr. HUGH SCOTT), I send a resolution to the desk and ask that it be stated.

The PRESIDING OFFICER. The clerk will read the resolution.

The legislative clerk read as follows:

Whereas Senator Dewey F. Bartlett, a Member of this body, has been served with a subpoena to appear as a witness before the District Court of the United States for the Western District of Oklahoma, to testify at 9:30 o'clock A.M. on the sixteenth day of April, 1974, in the case of United States v. Leo Winters et al; and

Whereas it is the sense of the Senate that by virtue of the provisions of the Constitution of the United States said court has no authority to compel the attendance of any Member of the Senate as a witness before said court during his attendance at any session of the Senate; and

Whereas, under the Standing Rules of the Senate, no Senator may absent himself from the service of the Senate without leave of the Senate: Therefore be it

Resolved, That Senator Dewey F. Bartlett is granted leave to appear as a witness before the district court of the United States in the case of the *United States v. Leo Winters* et al, at a time when the Senate is not in session or at a time when Senator Bartlett determines that such appearance will not interfere with his duties in the Senate.

Resolved, That a copy of this resolution be submitted to the said court.

Mr. GRIFFIN. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the resolution.

There being no objection, the resolution was considered and agreed to.

QUORUM CALL

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR CONSIDERATION OF THE UNFINISHED BUSINESS, S. 3044, TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the orders for the recognition of Senators tomorrow are concluded, the Senate resume consideration of the unfinished business, S. 3044.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR ADJOURNMENT FROM TOMORROW UNTIL 10 A.M. FRIDAY

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business tomorrow, it stand in adjournment until 10 a.m. Friday. I ask this merely for insurance purposes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. ROBERT C. BYRD. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 9:30 a.m.

After the two leaders or their designees have been recognized under the standing order, the following Senators will be recognized, each for not to exceed 15 minutes, and in the order stated: Messrs. BIDEN, ROTH, MUSKIE, HATHAWAY, CLARK, BIDEN again, STEVENS, NELSON, JAVITS, HARTKE, ERVIN, MONDALE, MATHIAS, STENNIS, and ROBERT C. BYRD.